File Date:
May 6, 2008

08-78

No._____

IN THE
SUPREME COURT OF THE UNITED STATES

KEITH ALLISON, PRO SE, ET AL – PETITIONER

VS.

WASHINGTON DENTURIST ASSOCATION, ET AL
– RESPONDENTS

PETITION FOR WRIT OF CERITORARI

KEITH ALLISON, PRO SE, ET AL
POST OFFICE BOX 8052
YAKIMA, WASHINGTON 98908
(509) 966-6320

SECTION 1

Questions For Review

No._____

IN THE
SUPREME COURT OF THE UNITED STATES

KEITH ALLISON PRO SE, ET AL – PETITIONER

VS.

WASHINGTON DENTURIST ASSOCIATION ET AL – RESPONDENTS

A U.S. DISTRICT COURT AND THE 9TH CIRCUIT COURT HAVE REFUSED TO ALLOW THE MERITS OF THIS CASE TO BE HEARD OR RULED ON

PETITION FOR WRIT OF CERITORARI

KEITH ALLISON, PRO SE, ET AL
POST OFFICE BOX 8052
YAKIMA, WASHINGTON 98908
(509) 966-6320

QUESTIONS PRESENTED

1. Should defendants be allowed to deprive Petitioners of their common law rights to earn a living at their chosen occupation when that occupation has been empirically proven to represent little, if any, potential for harm to anyone?

2. Should defendants be allowed to commit fraud, extortion, conspiracy, racketeering, restraint of trade and violations of constitutionally guaranteed rights?

3. Does the Washington State Legislature have the constitutional authority to enact any citizen initiative or legislation granting a monopoly on a particular occupation to a special interest group when that occupation has been empirically proven to represent little, if any, potential for harm to the public? Referenced empirical reports are from The Federal Trade Commission, The Washington State Health Coordinating Council, The Michigan State Department of Health and The Kentucky State

Legislature.

4. Does The Office of The Washington State Attorney General have the constitutional authority to use coercion and thereby abuse government's authority in order to force Petitioners into surrendering their constitutionally protected rights?

6. Does The Office of The Attorney General for the State of Washington have the constitutional authority to serve as a member of the Washington State Dental Disciplinary Board, and use, at dentistry's direction, that position to persecute the Petitioners for exercising their common law rights to earn a living at their chosen occupation?

7. Do Employees of The Office of The Washington State Attorney General have the constitutional authority to ignore statutory laws such as The Washington State Health Professions Regulation Acts which the legislature has enacted requiring occupations, trades, callings, etc. which represent

little, if any, potential for harm, to be regulated at

(ii)the least restrictive level (registration) in order to serve the self interests of the Washington State and American Dental Associations?

8. Does The Office of The Washington State Attorney General have the authority to ignore stare desisi case law which requires the State to at least demonstrate that Appellants' actions ever had a reasonable possibility of causing harm before prosecuting the Petitioners for exercising their common law rights?

9. Does The Office of The Washington State Attorney General have the constitutional authority to turn the practice of a citizens common law rights into a criminal act?

10. Since the Respondents have never, at any time, submitted documents or testimony denying any of the Petitioners allegations, shouldn't The U.S District Court at Seattle and the 9th Circuit Court of Appeals comply with stare desisis case law requiring

Courts to find in Petitioners favor when Respondents fail/refuse to respond to Petitioners allegations?

11. In four (4) separate instances, the State was ordered by Washington State Superior Court judges to hold full evidentiary hearings into the denturist issue in this state. However, state actors failed/refused to hold those hearings. Does the state have the legal authority to ignore/refuse to comply with such court orders?

12. Should the Respondent individual denturist members and/or employees of The Washington Denturist Association and/or Citizens for Affordable Dentures be allowed to make extortionate demands of the Petitioners when they stated, "Give us a minimum of $10,000.00, and we will guarantee that you will receive an official Washington State Denturist License when our Initiative (I-607) passes and is enacted into law. If you refuse to comply, we will see to it that you are never allowed to practice

denturitry in this state again; and, if you should somehow manage to take the state exam which we will require of anyone who doesn't go along, we will see to it that you are not allowed to pass the state denturists exam." Doesn't Demand + Threat = Extortion?

13. Since the Washington State Health Professions Regulation Acts specifically call for regulating health professions at the least restrictive level based upon potential for harm, does any special interest group or the Legislature of The State of Washington have the constitutional authority to require that a profession, craft, trade, or calling that has been proven to represent little if any potential for harm to anyone be regulated at the most restrictive level when there is no record of anyone ever having been harmed by a practitioner of the professions/craft or the profession/craft itself?

14. If any persons common law right to earn a living

at their chosen occupation can be violated through arbitrary and capricious legislation and/or the abuse of the state's police power, can any resident of this nation rely on government, or any government employee or entity to protect them from the abuse of a tyrannical government?

15. Does The Office of The Washington State Attorney General have the authority to represent and therefore protect private citizens and/or private organizations such as The Washington State Dental Association, The American Dental Association and/or The Washington Denturist Association from civil prosecution as they have been doing in this case? Is it not the responsibility of private citizens and private organizations such as those listed above to obtain legal assistance from a private legal firm rather than the state's top law enforcement agency? Such individuals and/or organizations are not, after all, government entities or employees.

16. The practices of dentistry, denturitry and dental technology are deemed to be separate and distinct healthcare modalities. Dentists and denturists scopes of practice include the making, fitting, altering and repairing of full and partial dentures directly to the public. Dental technicians are trained to make, alter and repair full and partial dentures for dentists and denturists. As anyone can see, these three healthcare modalities overlap and intertwine. And yet, dental technicians are forbidden from performing the act of fitting dentures to the public despite the fact that taking an impression of the intra-oral cavity, placing a bite block for a bite registration, doing a "try-in" of a waxed up denture and placing a completed denture or partial denture in a patients mouth are known throughout the three fields encompassing dentistry, denturitry and dental technology as being non-invasive procedures. With that in mind, why are dental technicians who actually construct these intra-oral appliances for

most dentists forbidden to deal directly with the public? Is that not a form of restraint of trade and a direct violation of that person's common law right to earn a living at his chosen occupation?

17. In their Motion to Dismiss to the 9th Circuit, John R. Nicholson, an employee of The Office of The Washington State Attorney General, signed the motion for each of the Respondents and/or the law firms purportedly representing them. That being the case, it appears to the Petitioners that each of the Respondents and their legal representatives have cast their lot with The Office of The Washington State Attorney General, and therefore each Respondent and their attorney's of record should be treated as "state actors" under the law. Since Mr. Nicholson has obviously chosen to represent the interests of each and every Respondent and their attorney's in this matter, Petitioners will forward a

copy of this petition to the Court and him only.
18. In a letter to Chris Hargreaves dated 1 July 1996 from Kirby Putscher, an employee of the Washington State Department of Health and Program Manager for The Board of Denture Technology in item 5, Ms. Putscher stated "Programs within health professions are required to be self-supporting through licensure fees. A fee study was done prior to enactment of this law. The information available on the number of possible licensees determined the schedule for fees that was developed."

Doesn't a statement such as this regarding the number of possible licensees indicate an early determination by elements of the Washington Denturist Association and/or Citizens For Affordable Dentures indicate a prior intent to limit the number of potential practitioners of the craft of denturitry? How does any profession, trade, calling, or craft have the constitutional/common law authority to limit the

number of practitioners of any craft, profession, calling, etc.? Such statements appear to verify the Petitioners assertions that the proponents of the denturist licensing scheme knowingly intended to implement an official policy of restraint of trade as soon as they were able to control and manipulate the licensing of denturists in the state of Washington.

19. A letter from the Spokane, Washington office of the Better Business Bureau to Petitioner Claude Edlin sheds additional light on why The Office of The Washington State Attorney General focused its law enforcement powers on denturists. The letter tells us the original complaints against denturists in Washington were not originated by the citizens and residents of the state of Washington, but they were initiated by another source.

In the letter to Petitioner Edlin, it states, in part, "At this time, our office is reporting that you maintain a satisfactory business record and no

complaints have been brought to our attention." A letter such as this gives clear evidence that it was not the public, but in all likelihood, the Washington Dental Association who initiated the original complaints against each of the Petitioners. This is one of the factors the Petitioners had hoped to clarify through the use of discovery which we have been denied by both Judge Robert of the Federal District Court in Seattle, Washington, as well as the judges at the 9th Circuit Court of Appeals in San Francisco, California.

20. As the Secretary of the Washington State Department of Health, Bruce Miyahara had the responsibility of appointing the members of the Washington State Board of Denture Technology. Along with the rest of the appointee's, he appointed Ron Miller, a Dental Lab Technician to the board. Mr. Miller's specialty as a dental technician dealt with full and partial dentures. For some reason, the

denturist members of the board did not want Mr. Miller on the board, and were so vehement about getting him off the board, they found it necessary to file a lawsuit against Secretary Miyahara in order to force him to remove Mr. Miller from the board. Query: What did the denturists fear about having Mr. Miller on the board? Did they fear he would expose their efforts to restrict/restrain the number of practicing licensed denturists in the state? In reality, what difference was there between Mr. Miller and Eric Hansen or Gary Fox? They were each dental technicians, except for the fact that the originally licensed denturists attained their exalted positions only after taking at the most, 36 hours worth of classes in intra-oral pathology, histology, microbiology, juris prudence, etc., which they purportedly mastered while taking those classes from Joseph Rosendahl, a person who evidence will show was educationally unqualified to teach those courses.

21. Why did the denturists who were involved with I-607 from its inception mandate that none of the "civilian" members of their newly forming board could not have any past history with the denturist craft? Again, was it due to their fear of someone with experience in the field being able to see through their self-serving intentions to limit the amount of competition they would have to deal with once they controlled the licensing of denturists in Washington State?

22. According to documents in the possession of the Petitioners, Gary Fox and Eric Hansen predicted the state of Washington could not support more denturists than 100 to 120 licensed denturists. What facts or statistics did Mr. Fox and Mr. Hansen rely on to conclude that Washington could not support more than 100 to 120 denturists? Such prediction on the part of the proponents of I-607 sound more like attempts to restrain trade than any viable prognostication.

SECTION – 2

List Of All Parties

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court(s) whose judgment is the subject of this petition is as follows:

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WA. Denturist Assn.	WA State Attorney Gen.
WA. State Dept. of Hlth.	WA State Nursing Brd.
WA State Brd. Of Dntr. Technology	Citizens for Affordable Dentures
Office of The WA State Governor	Yakima County Sheriff's Office
Office of The Yakima Prosecutor	WA State Dept. of Licensing
Office of The Spokane Prosecutor	Spokane County Sheriff's Office
Bates Technical College	

Individually and The Marital Estates of:

Val Charron	Chet Charron
Eric Hansen	Ron Hansen
Gary Fox	Mike Gillispie
Don Jensen	Dorothy Jensen
Don Mathews	Laslo Bako
Jody Rowe	Kurt Roehl
Joe E. Berlanga	Kenneth Ashton

Roger Mitchell	Russell Hill
Dylan Sedlechek	Edward Fredrickson, DDS
HAROLD McLearan, DDS	Ron Falther, DDS
Jeanine McDonald, DDS	Ernie Hernandez
Robert Ford	Jason Salami
Meliessa Loucks	Casey Zimmer
Tony Rugal	Patricia Allen
Larry Horton	Marc Deferyn
Lynette Cohn	Mary Dale
Pat Collins	Chuck Conlon
Susan Springer	Scott McKay
Bruce Anderson	Wanda Anderson
Steve Tucker	Vada Olsen
Clint Olsen	Randy Vize
Janet Vize	John Davis, DDS
Ron Weaver	Vicki Brown
Peggy Owens	Kathy Stout
Rob Watters	Larry Horton
Christine Gebbe	Lynette Cohn

Pat Collins

Eldred Olsen

William L. Shelby

Chris G. Swanson

A. Craig McDonald

Judge F. James Gavin

Joseph Rosendahl

Kirby Putscher

Ron Zirkle

Bruce Miyahara

Sue Shoblom

Amanda Tomlinson

John B. Welsh

Gail Zimmerman

Victor Barry, DDS

Hermania Subaran

Susan Springer

Diana Shelby

Lowell Boshardt, DDS

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Mack Huey

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SECTION – 3

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Dated this 5th day of July 2008

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TABLE OF AUTHORITIES

CASES:

1. Schick vs. United States (1904) 195 U.S. 65, 49 L.E.D. 99, 24 S.Ct.

2. Norton vs. Shelby County, 118 U.S. 425 P.42

3. Capital market Investment, et al. vs. Marylin Gonzalez-Toro, et al. 1st Circuit Court No. 06-2623. march 18, 2008.

4. Neitzke vs. Williams, 109 S.Ct 1827, 1832 (1989).

STATUTES AND RULES

42 U.S.C. Section 1981 42 U.S.C. Section 1983

42 U.S.C. Section 1985 42 U.S.C. Section 1986

18 U.S.C. Section 241 18 U.S.C. Section 242

18 U.S.C. Section 880 18 U.S.C. Section 1513

18 U.S.C. Section 1951 18 U.S.C. Section 1957

18 U.S.C. Section 875(b)(d)

18 U.S.C. Section 1952 18 U.S.C. Section 1962

Sections 1 and 2 of The Sherman Anti-Trust Act (1890).

16th American Jurisprudence 2d, Section 177 late 2nd Section 256

Revised code of Washington 18.120

Revised Code of Washington 18.122

Revised Code of Washington 18.130

Revised Code of Washington 18.30

Revised Code of Washington 18.32.005

IN THE
SUPREME COURT OF THE UNITED
STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays for a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

[x] For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished. No opinion, case dismissed through trumped up justification; most likely political in nature.

[X]

The opinion of the United States District Court appears at Appendix B to the petition and is unpublished. No opinion, case dismissed with prejudice due to trumped up justification; most likely political in nature.

SECTION 4

Index To Appendices

INDEX TO APPENDICES

Appendix A – Order of the 9th Circuit Court of Appeals dismissing Petitioners appeal for purported "lack of jurisdiction. The courts excuse was just that, an excuse with no foundation to support it.

Appendix B – erroneous Order of District Court Judge J.L. Robart granting Respondents Motion for Dismissal. Violate stare desisis.

Appendix C 1 – Seven (7) Certificates of Completion signed by Joe Rosendahl, the instructor of the Bates Technical College Denturist Training Program. The first two pieces of evidence here (C-1 and C-2) appear to be examples of Vallan Charron handing in two certificates at the same time for Joe Rosendahl to sign in order that he might obtain additional unearned "clock hours." Petitioners are aware that none of the listed classes could have possibly been mastered in the time allotted.

Appendix C-2 – Additional samples (C-3, C-4, C-5, C-

6 and C-7) of Certificates Completion that could not have been mastered in the time allotted for each class.

Appendix C-8 – Certificates from the Indian Tribal Denturitry Association signed by three of the proponents and supporters who actively promoted the illegal Denturist Licensing Initiative 607.

Appendix C-9 – Copy of the Washington State Denturist License of Joe Rosendahl. The Court might take note that Mr. Rosendahl was not educated as a denturist, nor did he practice as a denturist at any time prior to receiving his denturist license from the Washington State Board of Denture Technology.

Appendix C-10 – Health Professions Quality Assurance verification of denturist license of Joe Rosendahl.

Appendix C-11 – Shows the Washington Denturist Association approved the Bates Denturist Training

Program despite prior knowledge of the problems at Bates Technical College.

Appendix C-12 – A portion of the Complaint for Damages by graduates of the Bates Denturist Training Program. Eighteen of the twenty prospective licensed denturists in that one class failed the state exam. A 96% failure rate.

Appendix C-13 – Deals with a complaint by Plaintiff Bobbi J. Langford inre an alleged lack of ethics related to the denturist licensing exam. Complaint was dropped upon advice from Plaintiff's attorney.

Appendix C-14 – Demonstrates how the Washington Denturist Association approved the Bates Denturist Training Program.

Appendices C-15, C-16 and C-17 – Further demonstration of concerns inre the Denturist Training Program at Bates Technical College.

Appendix C-18 – Displays, in part, that Vallon Charron, Mark Mercer, James Davis and Wanda

Anderson are members of the Bates Technical College Denturist Advisory Committee. Mr. Charron's college education was in business administration, not the practice of denturitry, dental technology, or any of the health sciences. Due to an enormous number of public complaints about his work as a denturist, Mark Mercers qualifications to be on that committee, or even practice as a denturist are questionable. James Davis is not a denturist, he is an attorney who represents the denturist associations interest and lacks any qualifications to be an advisor on any denturist committee. Wand Anderson has no known history as a denturist or dental technician. She may have been appointed to the committee due to her husband's position in the Washington Denturist Association.

Appendix C-19 – Demonstrates Bates Technical College's prior knowledge of complaints inre instructor Joe Rosendahl and his relation to the

Denturist Training Program at Bates Technical College.

Appendix C-20 – Demonstrates that when a defendant makes no effort to counter any material facts in court, the Court should deem the defense uncontested and find in favor of the Plaintiff, not just dismiss the case out of hand.

Appendix D-1 – Demonstrates that Plaintiff state entity must prove that a Defendant healthcare practitioner does not have the level of competence he/she claims, and that any member of the public was even potentially harmed by the Defendants actions.

Appendix D-2 – Demonstrates how any regulatory entity may do harm to any institution, profession, craft, or person despite their so-called good intentions.

Appendix E – Demonstrates the intent of the Federal Trade Commission to change all state laws which

deprive denturists of their common law rights to earn a living at their chosen occupation.

Appendix F -- A document where John Welsh, Jr., Senior Counsel for The House Health Committee acknowledges in the margins of a proposed statute that would have brought denturitry back to the level of regulation required under the common law right to earn a living at ones chosen occupation and RCW 18.120 and RCW 18.122. Here Mr. Welsh wrote, "Under registration, all anyone needs to do is come in and sign up" with a state agency.

Appendix G-1 – Confirms how Respondents were involved in the National Indian Tribal Denturist Licensing scheme. Under "Tribal Denturist Exam," it is stated, "Denturists with the Tribal Denturist License will have a definite advantage when the Initiative passes." This meant that those who complied with the extortionate demand for payment Of $10,000.00 to Citizens for Affordable Dentures

and/or the Washington Denturist Association would be allowed to obtain the Indian Denturist License/Certificate, and could use that license/certificate to obtain an official Washington State Denturist License through a reciprocity provision in Initiative 607 when it passed and was enacted into law.

Appendix G-2 – Is an open invitation to all of those who complied with the Denturist Associations demand for payment of $10,000.00 to meet at the Spokane, Washington home of Gary Fox where they would be allowed to go over the questions and answers to the National Indian Denturist Licensing Exam.

Appendix G-3 – Demonstrates that the members and/or employees of the Washington Denturist Association and/or Citizens for Affordable Dentures had full knowledge of the implications of RCW 18.120 and/or RCW 18.122.

Appendix G-4 – An advertisement paid for by Citizens for Affordable Dentures seeking public support for I-607.

Appendix G-5 – A notice in a newsletter from the Washington Denturist Association to new denturists asking them to open their practices in Yakima, Washington because the denturists already working there had refused to go along with the associations licensing scheme and were therefore "unlicensed and had worked against their licensing efforts." Sounds as though it is reprisal for refusing to comply with an illegal licensing scheme and therefore violates Petitioners rights to not participate in something they know to be illegal.

Appendix G-6 – A Deposition Upon Oral Examination of Kristine Gebbie where she, as Secretary of the Washington State Department of Health admitted that she believed that denturists were legitimately registered in the state of

Washington.

Appendix H – Court Order showing how Claude Edlin was allowed to continue working as a registered denturist until such time as a court ordered full evidentiary hearing was conducted by the State of Washington. State actors obviously had no proof that denturists or the practice of their occupation ever harmed anyone because they ignored the Court's order, and never conducted the required hearing into the denturist issue.

Appendix I – This appendix is identical to Appendix H. Respondent Gary Fox continued working as a registered denturist until he opted to go along with the other Respondents illegal licensing scheme and became licensed due to his participation in that scheme.

Appendix J-1 RCW 18.19.080 -- Demonstrates how "The Secretary shall issue a registration to any applicant who..."

Appendix J-2 – RCW 18.02.070 – Issuance of licenses (and registrations).

Appendix J-3 – RCW 19.02.810 – Master Business License System.

Appendix K-1 – Health Personnel.

Appendix K-2 – Proposed legislation to Certify Denturists by the SHCC. Item number 7 states, "We found no evidence that anyone has ever been harmed by denturists."

Appendix K-3 – SHCC Health Professions Review Committee. Displays how dentistry opposed the regulation of denturists.

Appendix K-4 – Removable denture prosthetics training hours for denturists compared to dentists.

Appendix L-1 – Denturist operations face court dates. "State takes action against denturists due to "constant and increasing pressure from the WSDA."

Appendix L-2 – Newspaper article citing "Denturists' future uncertain as state pushes to close offices."

Appendix L-3 – Letter from State Attorney General Ken Eikenberry to James C. McGraw, D.D.S., President WSDA. Shows conspiracy between the Office of The Attorney General and the WSDA to deprive denturists of their common law rights to earn a living at their chosen occupation and their rights to exercise those rights.

Appendix L-4 – Displays a conspiracy between Eric Hansen, Chair, Board of Denture Technology and Rick Larsen of the WSDA, Ron Weaver, Director, Health Professions Quality Assurance, the Washington Denturist Association, the Dental Quality Assurance Commission and the Board of Denture Technology to deprive the Petitioners of their common law rights to earn a living at their chosen occupation.

Appendix L-5 Displays the Current Policies of The American Dental Association and each of their constituent societies and/or associations (including

the Washington State Dental Association) to deprive denturists of their common law rights to earn a living at their chosen occupation.

Appendix M-1 – Reflects on how the AMA engaged in a group boycott of chiropractors ad have the American Dental Association, their constituent associations and/or societies, along with the Washington State Dental Association (violates stare desisis).

Appendix M-2 – The American Medical Association found guilty of conspiring against chiropractors and the practice of chiropractic as have the American Dental Association, its constituent associations and/or societies and the Washington Dental Association. Also reflects on the same actions of members and/or employees of the Washington Denturist Association and/or Citizens for Affordable Dentures in their efforts to discriminate against Petitioners.

Appendix N-1 – Newspaper article citing how

denturist may continue to practice as ordered by Judge Dennis Yule of Pasco, Washington. Judge Yule's ruling in favor of Randall Vize was identical to the one given to Claude Edlin, Gary Fox and Ron Hansen.

Appendix N-2 – Judge won't stop denturist from continuing practice. That decision lasted but a few weeks until, according to Judge Gavin's wife, he "allowed himself to be approached off the bench by almost every dentist in Yakima, and a few politicians, who each ordered him to change his decision in Petitioner Keith Allison's case, and put him out of business."

Appendix O-1 – 42 U.S.C. Section 1981(c) governing Equal Rights Under the law. (c) Protection against impairment. The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

Appendix 0-2 – Deals with Color of Law violations.

Appendix P-1 – Documents regarding the denturist and/or or business registration of Rick Miller.

Appendix P-2 – Registration and License Description Sheet. States under Registration, these registrations are valid as long as you remain in business. Informs the Court that prior denturists were, in fact, "registered with a state agency" as required by law.

Appendix P-3 – State document from the Department of Revenue to Laslo Bako that his Registration Number is C 601 097 906. That "registration number" is the same number issued to Mr. Bako on his Master Business License which was issued to him via the Washington State Department of Licensing.

Appendix Q-1 – Sworn Affidavit of Rick Miller dated 27 August 1996.

Appendix Q-2 – Sworn Affidavit of Keith Allison inre RCW 18.120.010.

Appendix Q-3 – Sworn Affidavit of Keith Allison inre RCW 18.120.020.

Appendix Q-4 – Sworn Affidavit of Keith Allison inre RCW 18.122.010.

Appendix Q-5 – Sworn Affidavit of Keith Allison inre RCW 18.122.030.

Appendix Q-6 – Declaration of Rick Miller dated 24 September 1989.

Appendix Q-7 – Sworn affidavit of Jacklin Allison, Donald Way, Douglas Way and Stanley Way.

Appendix Q-8 – Application of a Denturist License by Allen McDonald.

Appendix Q-9 – Affidavit of Allen McDonald.

Appendix Q-10 – Sworn Affidavit of Douglas Way.

Appendix Q-11 – Sworn Affidavit of Keith Allison

Appendix Q-12 – Observations of Arnold King.

Appendix Q-13 – Statement by Susan M. King.

Appendix Q-14 - Statement of Cheryl Edlin.

Appendix Q-15 - Sworn Statement of Jacklin Allison.

Appendix Q-16 – Sworn Statement of Robbie Rockwell.

Appendix Q-17 – Notarized statement of Kenneth

Pitts.

Appendix Q-18 – Sworn Testimony of Gary Fox.

Appendix R-1 – Petitioner signatures.

BEST AVAILABLE COPY

SECTION 5

Basis For Jurisdiction

JURISDICTION

[x] For cases from federal courts:

The date on which the United States Court of Appeals decided this case was 15 February 2008.

[X] A timely petition for reconsideration/rehearing was filed on 19 February 2008, the 9th Circuit rendered its final dismissal of the case on 9 April 2008. Petitioners received the notice on 16 April 2008.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1) and Article III of The United States Constitution giving the Court the authority to decide constitutional issues through Judicial Review and to declare state and/or federal statutes unconstitutional.

The Petitioners mailed their initial Appeal to the 9th Circuit on 24 October 2007, because we had no responses from Judge Robart inre the disposition of our case. On 17 December 2007, the 9th Circuit

36041 with instructions to have our evidence in the Court by 17 January 2008, which we did. The Respondents were instructed to have their response to our allegations in the Court no later than 28 February 2008, but Petitioners never received copies of any such material. On 18 December 2007, the Petitioners forwarded an Amended Complaint For Damages and Equitable Relief to Judge Robart at the U.S. District Court at Seattle. Petitioners also requested Judge Robart to recuse himself from the case due to his having sat on the case for almost one full year with no evidence of the case being allowed to move forward.

No decision has ever been made on the issues involved in this case, and it therefore time for the Justices of The United States Supreme Court to determine the validity of the Petitioners claims.

SECTION 6

Constitutional Provisions

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Through duplicitous and unethical actions of state Superior Court judges such as Yakima County Superior Court Judge Francis James Gavin, U.S. District Court Judge J.L. Robart, and judges of the 9th Circuit Court, Petitioners have been denied their rights to due process of law through the denial of fair hearings before juries of our peers.
2. Respondents have, on numerous occasions, deprived the Petitioners of their constitutionally protected property rights inre the destruction of their businesses and/or denturist practices.
3. Respondents Assistant Attorney's General John H. Keith, Amanda Tomlinson and A. Craig McDonald have attempted to deprive Respondents of their right to maintain their residences in the state of Washington by

stating things such as, "If you'll just get out of the state, we'll leave you alone." In another instance, one prior registered denturist was told by an Assistant Attorney General, "You have one week to get out of the state, or I will take every piece of property you own. Assistant Attorneys General and/or County Prosecutors have also attempted to deprive member Petitioners of their common law rights to hold any form of employment in the state of Washington in the hopes of driving the Respondents from the state.

4. Respondents deprived the Petitioners and other citizens of The United States of their rights to earn a living at their chosen occupation despite that occupation having been proven to represent little, if any, potential for harm to anyone.

5. Petitioners professional and/or private

reputations have been deliberately besmirched by the Respondents acting under color of law and the appearance of official right while maliciously prosecuting the Petitioners for exercising their constitutional rights.

6. Respondents have violated the Petitioners rights by turning the exercise of their constitutional rights into criminal acts.

7. Respondents have attempted to deprive member Petitioners of their right to work in and and/or all healthcare endeavors in an attempt to drive the Respondents out of the state of Washington, and/or deprive them of their ability to earn their livelihood in any of

8. Respondents have intimidated Washington state citizens into not patronizing the Respondents denturist offices while the Petitioners were working as prior registered denturists. Respondents situated their

vehicles in the parking lots of the Petitioners denturist practices, copied down the automobile license plate numbers of prospective patients, and then contacted those patients at their residence and intimidated/attempted to intimidate them into not utilizing the services of the Petitioners.

9. Respondents have deliberately deprived Petitioners of the freedom to live their lives as they deem best, deprived them of liberty and deprived them of the pursuit of happiness and the ability to make contracts in their chosen occupations as denturists.

10. Respondents have intentionally deprived the Petitioners of the fruits of their labor as properly registered denturists.

11. Respondents have knowingly violated provisions of the Washington State Health Professions Regulation Acts (RCW 18.120 and

RCW 18.122) which require all health professions, occupations, trades, callings, etc. to be regulated at the least restrictive level based upon potential for harm to the public.

12. Respondents have deprived American citizens of their right to freedom of choice in who they prefer to provide them with full and/or partial dentures.

13. Due to the Respondents malicious intent and/or prosecution of Petitioners, prior registered denturists have been unable to pass on their businesses or practices to their rightful heirs through common inheritance practices.

14. Respondents maliciously forced one of the Petitioners to leave the United States and take up residence in a foreign land due to threats by members of The Office of The Washington State Attorney General and/or a county

15. prosecutor from the Tri-Cities area, stating

he would be incarcerated for the rest of his life if he didn't get out of the country. As a result, Petitioner lost all of his denture making equipment thereby depriving him of his ability to make a living at his chosen occupation.

16. Respondents have deprived the Petitioners of their property rights such as their businesses and/or licenses/registrations to practice the craft of denturitry.

17. Petitioners have been denied their right to Due Process of The Law.

18. Petitioners have been denied their common law right to labor at their chosen occupation due to attempted extortion by members and/or employees of the Washington Denturist Association and/or Citizens for Affordable Dentures.

19. Petitioners have been denied their common

20. law rights to earn a living at their chosen occupation due to anti-trust activity by the Respondents.

21. Petitioners have been denied their common law rights to earn a living at their chosen occupation due to a fraudulent denturist licensing scheme promoted by employees and/or members of the Washington Denturist Association and/or acting in collusion with other Respondents.

22. Petitioners were denied their common law rights to earn a living at their chosen occupation due to racketeering activity and collusion by the Respondents.

23. Respondents conspired to deprive the Petitioners of their common law rights to earn a living at their chosen occupation by intimidating Petitioners, and others unknown at this time, into not exercising their

constitutional rights due to the potential of being illegally incarcerated for exercising those rights.

SECTION – 7

Concise Statement of Case

STATEMENT OF THE CASE

FIRST CAUSE OF ACTION

COMES NOW THE PETITIONERS acting pro se, requesting The United States Supreme Court to grant their request for a Writ of Certiorari against the Respondents listed above inre the Respondents having violated the Petitioners common law rights to earn a living at their chosen occupation through fraud, conspiracy, extortion, racketeering, restraint of trade and/or constitutional/common law violations. Respondents have acted maliciously and violated the Petitioners rights to practice their occupation of denturitry knowing full well the trade of denturitry has been proven through four empirical reports by The Federal Trade Commission, The Washington State Health Coordinating Council, The Michigan State Department of Health and The Kentucky State Legislature, that there is no record of anyone ever having been harmed by a denturist or the practice of

denturitry and that denturists and/or the practice of denturitry represent little, if any, potential for harm to anyone.

The jurisdiction of The United States Supreme Court is appropriate for this petition. The activity described herein occurred throughout the state of Washington; Federal and Washington State statutes and case law and constitutional mandates have been violated. As a result, there are numerous federal and state constitutional issues which are apparently beyond the ability of some Washington State Courts, the U.S. District Court at Seattle, and the 9th Circuit Court of Appeals to deal with in an unbiased manner.

As a result of the Respondents actions, they have denied the Petitioners their constitutionally protected rights to exercise their constitutional and/or common law rights to labor at their chosen craft, and turned the exercise of those rights into

criminal acts.

It is the Petitioners contention the Respondents have committed these acts in violation against the Petitioners rights and the rule of law. As the Court shall see, this case has never been adjudicated, the merits of the case have never been allowed to be heard by a jury, nor has it ever been adjudicated on the issues or applicable case or statutory law. This is/has been to the detriment of the Petitioners, and every citizen of this nation; the only consideration that has been given to the issues here are the political agenda's which the defense has used to protect the false appearances of honor, integrity and ethics among our public servants and special interest groups. In short, there has never been a determination by a Federal District Court, or the Ninth Circuit as to the validity of the facts of this case, only claims by the Respondents that the Petitioners have purportedly violated some court rule

in submitting their complaint. This is a violation of the Petitioners right to due process of law and stare decisis.

Petitioners are well aware of the opinions of the public inre the issues involved. However, now is the time for this Court to determine whether these political agenda's have been orchestrated by special interest groups and public servants in violation of established law.

Through a policy of accepting financial remunerations for granting dentists an exclusive right to provide denture services directly to the public, Washington state officials, and officials from states throughout these United States have for many years, denied denturists their common law rights to earn a living at their chosen occupation of denturitry.

After concluding an extensive study into the safety of the practice of denturitry during the mid 1970's, and determining that denturists and/or the

potential for harm to the public, the San Francisco Regional Office of The United States Federal Trade Commission concluded that denturists should be allowed to practice their craft independently from dentists. The FTC study concluded there was no record of anyone ever having been harmed by a denturist or the practice of denturitry. This study was soon followed by similar studies by The Washington State Health Coordinating Council, The Michigan State Department of Health and The Kentucky State legislature. Each of these empirical studies came to the same conclusion as that of the FTC; denturitry represents little, if any, potential for harm to anyone.

After concluding their study inre denturists and/or the practice of denturitry, the San Francisco Regional Office of The United States Federal Trade Commission concluded that denturists could safely practice their craft independently from dentists. As

a result of these findings, the FTC sent out a "Notice of Intent To All State Governments? That their intent was to repeal all state laws that disallowed the independent practice of denturists across the length and breadth of this nation. However, due to apparent political pressure from The American Dental Association and its constituent societies and/or associations, the FTC failed to follow through with their stated intent. This was obviously the result of the dental community's tremendous power of its Dent Pac funds to mitigate the efforts of the FTC. Even so, as the notice stated, it was a Notice of Intent To All State Governments, and as government officials, our public servants should have fully understood that their exclusionary laws against the independent practice of denturitry violated constitutional and/or common laws as they pertain to laboring at an occupation of ones choice that represents no potential for harm to anyone. Due to

this prior knowledge, all state governments, including the State of Washington, should have voluntarily changed their laws beginning in the mid 1970's, and free denturists of their shackles to practice their craft unfettered by dentistry's financial interference, or public officials accepting so-called "campaign contributions" for the purpose of continuing to deprive denturists of their right to earn a living at their chosen occupation.

In 1985, the Washington State Legislature enacted the Health Professions Regulation Acts whose purpose was to increase competition within the healthcare occupations by regulating healthcare practitioners at the least restrictive level based upon potential for harm to the public. That legislation states, in part, "After evaluating the criteria in subsection 2 of this section and considering governmental and societal costs and benefits, if the legislature finds that it is necessary to regulate a

health profession not previously regulated by law, the least restrictive alternative method of regulation should be implemented, consistent with the public interest and this section."

Prior to the Washington State Department of Health becoming a functioning state agency in 1990, the Washington State Department of Licensing performed all regulatory functions (registration, certification and/or licensure) for the State of Washington. As a result, each of the prior registered denturists in Washington told the department they would be "making, fitting, altering and/or repairing full and/or partial dentures directly to the public;" we filled out the appropriate paper work, paid the appropriate fees and received our "registrations" in the form of Master Business Licenses and Registrations from the Washington State Department of Licensing.

Since each of the prior registered denturists

complied with each of the states rules and regulations inre "registering with a state agency," the Petitioners must question if the state did not expect us to utilize our Master Business Licenses and Registrations for the purpose we wrote on their application, and to open our practices directly to the public, why then did we have to jump through the state's hoops by filling out their forms, paying our money for Registrations, didn't the department realize we expected to do what we said we were going to do? If they didn't believe we would use those licenses for their stated purpose, why did the department issue us a master Business License and Registration?

Obviously, each prior registered denturist was properly "registered" with the state agency that regulated the health professions. But despite being properly registered with the state, the Washington State Dental Association and/or the American Dental

Association began intimidating state officials into allowing the department (and later the department of health) to act under color of law and/or the appearance of official right, to file intimidating and slanderous lawsuits against all prior registered denturists. This was done in order to coerce them into not exercising their constitutional and/or common law rights to earn a living at their chosen occupation.

In four (4) such instances, Washington State Superior Court Judges ordered the state to hold full evidentiary hearings into the denturist issue. Those hearings were never conducted because The Office of The Washington State Attorney General and The Washington State Department of Licensing acted in collusion through Assistant Attorney General John H. Keith, one of the state's assistant attorney's general of record and a member of the Washington State Dental Disciplinary Board, and refused to hold

those court mandated hearings. Petitioners were never able to locate an attorney with the courage to force the state to hold those hearings, so nothing was ever done from that side either. In another instance, after finding one of the Petitioners not guilty of practicing dentistry without a license and stating to the press, "I don't have the authority to shut down a legitimate business," Yakima County Superior Court Judge Francis James Gavin did, according to his wife, allow himself to be approached off the bench by almost every dentist in Yakima, and agreed to change his decision at a rehearing and find the Petitioner guilty as charged.

Each of the court actions against prior registered denturists created a chilling effect on other denturists and/or other citizens unknown at this time, but who may have wanted to become registered denturists, and intimidated them into not exercising their constitutional and/or common law

rights to earn a living at their chosen occupation.

SECOND CAUSE OF ACTION

During the years 1994 and 1995, members of the Washington Denturist Association, including but not limited to Gary Fox, Eric Hansen, Ron Hansen, Val Charron, Chet Charron, Mike Gillispie, laslo Bako and others unknown at this time, entered into an agreement to promote an illegal denturist licensing scheme that became I-607. They were told by the Petitioners and others that what they were proposing was illegal due to the findings that denturists and their craft represent little, if any, potential for harm, but they were determined to pursue the licensure of denturists in the state of Washington.

In order to fund their signature gathering efforts, the members of the association demanded that all prior registered denturists give them a minimum of $10,000.00 which would then

"guarantee the donor" would receive an official Washington State Denturist License as soon as I-607 was voted on by the public and enacted into law.

Petitioners and others were also told, "if you refuse to go along with our plans, we will see to it that you are never allowed to practice as a denturist in the state of Washington again, because we will not allow you to pass the state licensing exam when it goes into effect. And, we will be able to do this because we will control who does or does not get licensed in this state." Petitioners believe that is extortion which violates both federal and state statutes, case law including those governing RICO violations.

Petitioners were also told by the Respondents, "by giving us the $10,000.00, you will be allowed to take the National Indian Denturist Licensing Exam. You will pass the exam, receive a National Indian Denturist License which you will be allowed to show

to the newly formed Washington State Board of Denture Technology, and thereby obtain an official Washington State Denturist License through a reciprocity clause in our initiative." Petitioners were also informed, "if you don't have the money to pay us the full $10,000.00, Chet Charron has made an agreement with his bank whereby they have agreed to loan the money to anyone who doesn't have the money to put up right now."

After I-607 was approved by the voters and enacted into law, Petitioners notified state officials including but not limited to Washington State Department of Health Secretary Bruce Miyahara, Representative Mary Skinner, Representative James Clements, Senator Rosa Franklin, Senator Alex Deccio, and the combined House and Senate health Committee's and others of the extortionate demands. As a result, the legislature enacted Substitute Senate Bill 5308 which temporarily resulted in the Indian

Enclave and national Indian Denturist Licensing provisions, and the independent status of their board being removed from the newly enacted Denturist Licensing Act. This newly enacted statute was soon declared unconstitutional by the Washington State Supreme Court, and the state did nothing further to try to rectify the wrong-doings of the members and/or employees of the Washington Denturist Association and/or Citizens For Affordable Dentures. However, Gary fox and Eric Hansen, two of the major supporters of the illegal licensing scheme were appointed by Secretary Miyahara to head up the newly forming Washington State Board of Denture Technology. As a result, this allowed them to begin controlling who did, or did not, become a licensed denturist in the state of Washington.

Since there was no longer the National Indian Denturist Licensing scheme available to "grandfather in" those who contributed the

demanded $10,000.00. state officials (presumably approved by Secretary Miyahara and others unknown at this time) allowed the denturists to set up another scam through a purported denturist educational program at Bates Technical College in Tacoma, Washington. These classes lasted approximately three (3) weeks. During this period, the classes were held each evening for 3 hours during which the initial applicants purportedly mastered all aspects of classes such as microbiology, oral pathology, histology, juris prudence, etc. after potentially 36 class hours.

Petitioners further allege that due to information from a few of the class attendees, several of the individuals who signed up for the three week classes at Bates either did not show up, or left the classroom within minutes of the start of class. And, even though he was fully aware that certain individuals had not been in attendance, program

instructor Joseph Rosendahl signed off on their "Certificates of Completion" of the course of study, thereby allowing them to graduate from the program. Then, upon completion of this questionable educational program, each of the individuals who participated in the I-607 scheme were licensed by the Board of Denture Technology and allowed to work directly with the public. This despite at least a few of them being convicted felons and others with little more denture technology education than what they may have learned through on-the-job training. Not long after he graduated the initial class of denturists, Joe Rosendahl, who had never worked as a denturist before, was granted licensure by the Board of Denture Technology.

Petitioners believe it to be imperative the Court have full knowledge of the questionable activities that have occurred between the Washington Denturist Association, the Washington

Board of Denture Technology and Bates Technical College because it will give the court additional insight into a purported educational program approved by Bates Technical College, the Washington Denturist Association, the Washington, the Washington State Department of Health and the Washington State Board of Denture Technology.

A Complaint for Damages was filed on behalf of 20 graduates of the Bates program who were unable to pass the state licensing exam against the State of Washington, Bates Technical College and Joe Rosendahl as the Defendants. The case was settled out of court in the Plaintiff's favor.

A few of the Petitioners who refused to comply with the extortionate demand but took the newly enacted Washington State Denturist Licensing Exam, were not allowed to pass the exam despite having many years of experience as denturists and/or dental laboratory technicians who specialized in

constructing full and/or partial dentures.

Due to a dire lack of intestinal fortitude on the part of members of the legal community, Petitioners have been forced t act as pro se litigants. As a result of the litigant's lack of legal education, Judge J.L. Robert has apparently demonstrated a bias against pro se Petitioners and has dismissed the case with prejudice purportedly because we were unable to supply him with the precise date and time that certain events took place. Petitioners did, however, provide Judge Robert with a plethora of information despite having been denied discovery. However, Judge Robert had the case in his possession for nearly one year, during which time he ignored all of the Petitioners motions for a court date and/or discovery and Summary Judgment for what appears to be no better reason than to comply with dentistry's political agenda.

Petitioners then moved the case to the Ninth

Circuit requesting a hearing or having the case remanded to a different Federal Court. But, the judges dismissed our appeal claiming we "didn't file the appeal in a timely manner. Ninth Circuit records will show the Petitioners did, in fact, file their claim in a timely manner and that the court demanded we submit our evidence by 27 January 2008; which the Petitioners did. The court also demanded the Respondents file their evidence disproving the Petitioners allegations by the 28th of February 2008. At no time has the defense ever filed any responses refuting the Petitioners allegations, or presented any evidence to the contrary. Since the defense has never denied Petitioners allegations or presented any evidence to the contrary, Petitioners believe the court should have declared the Respondents guilty.

For all intents and purposes, it appears that Judge Robert acted under color of law and/or the appearance of official right when he dismissed the

Petitioners lawsuit with prejudice for what was apparently no better purpose than to protect the political, judicial and/or bureaucratic reputations and/or employment of many of the Respondents in Case # CV06-01761JLR. This occurred, in part, when Judge Robert dismissed the Petitioners case after allowing it to sit idle in his court for almost one full year while depriving the Petitioners of a court date, discovery and motion for summary judgment; this is a blatant denial of due process.

As for Judges Wallace, Leavy and Rymer's Ninth Circuit decision to dismiss based upon "lack of jurisdiction," that appears to have been little more than a method by which they erroneously sought to get out from under a case containing dire political consequences. Because Judges Wallace, Leavy and Rymer erred grievously when they chose to falsely dismiss the Petitioners claims for purportedly "not submitting their Appeal in a timely manner, the

Petitioners have again been denied their right to have their complaint heard by a jury of their peers. In all probability, "political considerations" were the foundation for the courts decision in this matter.

REQUEST FOR RELIEF

1. Since Petitioners have no other way of punishing the Respondents for depriving them of their constitutional and/or common law rights to earn a living at their chosen occupation, we are compelled to ask the Court to award financial damages to the Petitioners and any additional punishment for the Respondents as the Court sees fit. Petitioners respectfully request:

a. For a Declaratory Judgment that Respondents have unlawfully sold official Washington State Denturist Licenses to individuals to practice denturitry in the state of Washington. That such conduct was/is an abuse of power and authority, that it amounts to

malfeasance/misfeasance of office, and that individual public servants and the denturists involved should be forever deprived of any form of regulation that would allow them to work as denturists again. Each Respondent denturist should never again be allowed to hold any interest (financial or otherwise) in any dental office, denturist office, clinic, etc., dental laboratory, dental supply company, or anything related to such activities.

b. For a Declaratory Judgment that the Denturist Licensing Act violates the United States Constitution and/or the Common Law Right to Earn A Living at ones chosen occupation because denturitry has been proven to represent little, if any, potential for harm to the public, and is therefore null and void. Petitioners also request the Court to declare that the prior registrations of the Petitioners are, as they have claimed, viable registrations for the practice of denturitry in the state of Washington, and

are/were the legitimate and appropriate form of regulation for denturists in the state of Washington.

c. For a Declaratory Judgment that Respondent denturists who participated in the fraudulent licensing scheme be disallowed from ever holding any professional license again.

d. For a Declaratory Judgment that employees, agents and/or members of Washington State Agencies, Departments, Counsels, Commissions, Boards and/or Bureau's conspired to deprive Petitioners of rights guaranteed them under the U.S. and Washington State Constitutions. Due to the egregious nature of their actions and the loss of their businesses due to their inability to sell their denturist practices or expand their practices, damages to their personal/professional reputations, and/or damages to the Petitioners health, an award of damages compensating each Petitioner in the amount of $800,000,000.00 (Eight Hundred Million)

dollars, plus reasonable attorney's fees and expenses.

e. Awarding Petitioners the restoration of their rights to liberty, the pursuit of happiness, property, equal protection under the law and due process of law as mandated by the 5th and 14th Amendments.

f. Awarding Petitioners compensatory damages in the maximum allowable amount under 42 U.S.C. Section 1981 for damages under Equal Rights Under The Law; 42 U.S.C. Section 1981a for Damages in Cases of Intentional Discrimination in Employment; 42 U.S.C. Section 1983 for Damages for Deprivation of Rights; 42 U.S.C. Section 1985 for Damages for Interference With Civil Rights; 42 U.S.C. 1986 for Action for Neglect to Prevent; 18 U.S.C. Section 241 for Damages for Conspiracy Against Rights; 18 U.S.C. Section 242 for Damages for Deprivation of Rights Under Color of Law; 18 U.S.C. Section 880 for Damages for Receiving the

Proceeds of Extortion; 18 U.S.C. Section 1513 for Damages for Retaliating Against a Witness, Victim, or an Informant; 18 U.S.C. Section 1951 for Damages for Interference with Commerce by threats or Violence; 18 U.S.C. Section 1957 for Damages for Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity; 18 U.S.C. Section 875(b)(d) for Damages under Interstate Commerce and Foreign Travel or Transportation; 18 U.S.C. Section 1952; 18 U.S.C. Section 1962; The Sherman Anti Trust Act of 1890; 18 U.S.C. Section 1952; and 18 U.S.C. Section 1962.

g. Awarding the Petitioners prejudgment interest.

h. Awarding the Petitioners the removal of all slanderous/defamatory material from all public records, to be replaced therein with public censure of the creators thereof.

i. Awarding Petitioners any additional relief

the Court finds equitable, appropriate and/or just.

j. Awarding Petitioners triple damages as allowed by federal and/or state statutes.

k. Awarding petitioners appropriate punitive damages and interest.

PRAYER

Due to the egregious nature of the Respondents wrong-doing and actions and/or failure to act by the Respondents, their employers, agents, representatives, and/or employees to prevent this outlandish disregard for the law, Petitioners pray for the maximum award including all future damages; application of all punitive damages and triple damages and interest available by law.

Petitioners pray for this order in the hope that the award of money and sanctions will preclude the Respondents from ever engaging in any such action and/or behavior in the future, and assure compliance by protecting the civil, constitutional and common

law rights of every citizen of the state of Washington and these United States.

SECTION – 8

Concise Argument For Writ

REASONS FOR GRANTING THE PETITION

Petitioners have been unreasonably/illegally deprived of their rights to due process, the freedom to associate with others who wish to practice the occupation of denturitry, and have generally been abused by governmental tyranny exercised by both government and/or citizen Respondents. As a result, the Petitioners have good reasons for questioning the integrity of numerous public officials, and the legitimacy of the application of many rules of law.

Respondent members of Washington State government and/or members and/or employees of the Washington Denturist Association, Citizens for Affordable Dentures, the Washington State Dental Association, and/or the American Dental Association and its constituent associations and/or societies, have committed fraud, extortion, conspiracy, racketeering, constitutional and anti-trust violations in order to

maintain illegal monopolistic cartels related to the provision of full and/or partial dentures directly to the public.

The activities of the above cited private organizations and/or government entities have also deprived all of the citizens of these United States of their freedom of choice in who they select to provide them with full and/or partial denture services. Each of the above cited entities have also deprived American citizens of their right to participate in and/or practice the craft of denturitry despite the knowledge that the craft has been proven to represent little, if any, potential for harm to the public.

By granting this petition, the Court will go a long way in guaranteeing the basic freedoms guaranteed under constitutional law and protected by the United States and individual state Constitutions.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

_____

Keith Allison, Pro Se, et al.

Additional Pro Se signature provided

Date: June 2008

No._____

In The
Supreme Court of The United States

Keith Allison, Pro Se, et al. Petitioner(s)

Vs.

Washington Denturist Association, et al. –
Respondent(s)

Proof of Service

I, Keith Allison, do swear or declare that on this date_____ 2008, as required by Supreme Court Rule 29, I have served the enclosed PETITION FOR A WRIT OF CEERTIORARI on the party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

SECTION – 9

Appendices

SECTION – 10

Appendices A - E-1

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Filed Apr 09 2008

Keith Allison, et al., No 07-36041

Plaintiffs-Appellants D.C.No CV-06-01761-JLR

v.

Citizens For Affordable Dentures, including members And employees and their Marital estates, et al., ORDER

Defendants-Appellees

Before WALLACE, LEAVY and RYMER, Circuit Judges

Appellant's motion for reconsideration of this court's February 15, 2008 order dismissing this appeal for lack of jurisdiction is denied

All other pending motions are denied as moot.

No motions for reconsideration, rehearing, modification, clarification, stay of the mandate or any other submissions shall be filed or entertained in this closed docket.

Under penalty of perjury as governed by the laws of the State of Washington, I, Keith Allison, do hereby declare this to be an accurate copy of the document cited.

Appendix – A

APPENDIX – B

Under penalty of perjury as governed by the laws of the State of Washington, I, Keith Allison, do hereby declare that although United States Federal Judge J.L. Robart's Order of Dismissal was dated on the 2nd day of October 2007, the Petitioners did not receive said document until on or about 15 October 2007. Petitioner immediately mailed an Appeal to the 9th Circuit the following day (on/or about 16 October 2007).

Therefore, Petitioner believes the 9th Circuit Order of Dismissal based on a purportedly untimely appeal is fraudulent and was concocted as a means of further aiding and abetting the Respondents efforts to maintain an illegal/unconstitutional Washington State government regulatory agenda. Petitioners believe the denturist Licensing Scheme violates both Washington state law as well as the common law right to earn a living at their chosen occupation because the practice of denturitry has been proven to

represent no potential for harm to anyone.

26 April 2008

Keith Allison, Pro Se

Appendix – B

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Keith Allison, et al.

Plaintiffs

v.

Case No. C06-1-1761JLR
Order Granting Motions
to Dismiss

Citizens For Affordable
Dentures, et al.

Defendants

This matter comes before the court on motions to dismiss by several Defendants: the American Dental Association ("ADA") (Dkt. #41), the Washington State Denturist Association and certain individual Defendants ("WSDA") (Dkt. #45), and the individual and organizational Defendants represented by the Attorney General of Washington ("State Defendants") (Dkt. #47). In response, Plaintiffs have filed a number of papers, some labeled as responses and some labeled as motions (Dkt. ## 46, 52, 53, 54, 59, 62). The court denied Plaintiffs' unaffiliated motions that failed to request a cognizable form of

relief (Dkt. ## 58, 60). A week after the motions to dismiss were noted for consideration, Plaintiffs filed a "Motion to add supporting data to Plaintiffs Motion File" (Dkt. #63) and a motion for summary judgment (Dkt. #65).

The court has reviewed all the papers filed in this case. It GRANTS Defendants' motion to dismiss with prejudice (Dkt. ##41, 45, 47), DISMISSES this case in its entirety, and STRIKES as moot Plaintiffs' later-filed motions (Dkt. ##63, 65).

I. BACKGROUND

Pro se Plaintiffs would like to make dentures without being licensed to do so, thereby violating Chapter 18.30 of the Washington Revised Stastutes. Thus, at the heart of this matter, is Plaintiffs' allegation that over 80 named Defendants improperly advocated for licensing requirements, enacted the denturist legislation, and enforced Washington law. See. Am. Compl. At 10 (Dkt. #38).

As for relief, Plaintiffs ask for, among other things $800 million in damages, removal of the relevant state officials (including the governor and the state attorney general), and a prohibition on those officials from ever working for the government again. Id. at 19-22.

Consistent with the court's duty to construe pro se litigants' pleadings liberally, the court twice declined to dismiss the action and instead identified Plaintiffs' pleading deficiencies with suggestions on how to correct them. April 30, 2007 Order at 2-3 (Dkt. #32); January 30, 2007 Order at 2-3 (Dkt. #17). In its last order on the issue, the court noted that Plaintiffs would be afforded "one final opportunity to file a complaint that complies with Rule 8 of the Federal Rules of Civil Procedure." April 30, 2007 Order at 2.

Defendants now move to dismiss because Plaintiffs' second amended complaint suffers from

the same deficiencies as the previous two (Dkt. ## 1, 22) and fails to state a claim for which relief can be granted. The ADA contends that any conspiracy claims are barred by the applicable statute of limitations and that the estates should be dismissed as Plaintiffs. ADA Mot. At 9-10. The WSDA argues expiration of the statute of limitations and improper service of the summons and the complaint. WSDA Mot. At 5-6. The State Defendants argue that it is unclear which Plaintiffs have signed on to the second amended complaint. State Defs." Mot. At 4-5.

II. ANALYSIS

The court directed Plaintiffs to amend their conclusory allegation in order to put Defendants on notice of the factual basis giving rise to such claims. April 30, 2007 Order at 2. "That is, in addition to specifying who did what to whom, Plaintiffs must include a concise and clear factual basis for their claims – i.e., what happened and when it happened."

Id. This Plaintiffs have not done. The court would be justified in dismissing Plaintiffs' action on this basis alone. See Fed. R. Civ. P. 8(a); see, e.g., McHenry v. Renne, 84 F.3d 1172, 1179-80 (9th Cir. 1996) (affirming dismissal of plaintiff's complaint for failure to comply with court's order requiring a more definite statement).

Furthermore, the court cannot discern how any of the Defendants have violated Plaintiffs' rights by advocating for, enacting, or enforcing the legislation that regulates denturists. Although Plaintiffs aver broadly to a "conspiracy" by which Defendants prevented their open-ended right to earn money as unlicensed denturists, Plaintiffs have not alleged facts that would lead to a cognizable violation of state or federal law. See Sec. Am. Compl. At 8-19. At most, Plaintiffs challenge the constitutionality of RCW Section 18.30 without suggesting how the statutory scheme is legally deficient. Thus, in

addition to dismissing this case under Federal Rule of Civil 8(a), the court also dismisses the action under Rule 12(b)(6).

A. Standard of Review

The court may dismiss an action under Federal Rule of Civil Procedure 12(b)(6) based upon the "lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990). Although the court construes the pleadings of pro se litigants liberally, it may not supply essential elements to the complaint that have not been initially alleged. Ivey v. Bd. Of Regents, 673 F.2d 266, 268 (9th Cir. 1982). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the

elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly, __U.S.__, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). Although the court takes factual allegations in a complaint to be true, those allegations "must be enough to raise a right to relief above the speculative level." Id. at 1965.

Legislative classifications are presumed to be constitutional, and the burden of showing a statute to be unconstitutional is on the challenging party, not on the party defending the statute. New Your State Club Ass'n. v. City of New York, 487 U.S. 1, 17 (1988); State Fin. Comm. V. O'Brien, 711 P.2d 993, 993 (Wash. 1986) (holding that statutes are presumed to be constitutional and that the challenger bears a heavy burden to overcome that presumption). "[A]ny reasonable doubts are resolved in favor of constitutionality." Washington Fed'n of State Employees v. State, 901 P.2d 1028, 1034

(Wash. 1995); see New York State Club Ass'n. 487 U.S. at 17 (noting that those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the government decision maker).

B. Regulation of Denturists

In 1994, the voters passed Initiative 607, allowing persons other than dentists to make and sell dentures. 1995 Wash. Laws Ch. 1; see Charron v. Miyahara, 950 P.2d 532, 534 (Wash. Ct. App. 1998). The initiative also created a new regulatory Board of Denture Technology, added a new chapter governing denturists (RCW 18.30), and amended several section of the Uniform Disciplinary Act to include denturists. See 1995 Wash. Laws Ch. 1; Charron, 950 P.2d at 534. The Department of Health issues and denies denturist licenses, governs unauthorized practice, and disciplines licensed denturists. RCW

18.30.135.

Plaintiffs attack the ADA and WSDA for advocating policies that require denturists to be licensed, and various state officials for participating in this "conspiracy" by enacting legislation or regulating the licensing of denturists. For example, Plaintiffs refer to unnamed persons from the WSDA who, at an unspecified time and place, purportedly attempt to extort money from unidentified Plaintiffs to support Initiative 607. Sec. Am. Compl. At 11. Similarly, Plaintiffs allege that a state legislator sought to have denturists be subject to licensing. Id. at 14. Such factual allegations do not give rise to a cognizable cause of action simply by being attached to a litany of purported violations.

Plaintiffs were not deprived of their constitutional or other rights by the enactment of RCW 18.30. Examining the field of dentistry, Washington courts have held that the state may

reasonably exercise its police power by regulating those who make dentures. State v. Anderson, 338 P.2d 740, 742 (Wash. 1959); see Gebbie v. Olson, 828 P.2d 1170, 1173-74 (Wash. Ct. App. 1992) (holding that Anderson still controls). The Washington Supreme Court noted:

> We believe the public interest demands assurance that the experience and tested eyes and guiding hands of a Licensed practitioner should control the use of prosthetics from manufacture to mastication, under familiar principles of agency and the police power, where authority and responsibility more nearly can contribute to the health and safety of the community.

Anderson, 338 P.2d, at 742 (internal citations and quotations omitted).

1. For example, Plaintiffs contend an equal protection violation but fail to allege facts suggesting that RCW 18.30 fails to treat people similarly situated in the same manner. Sec. Am. Compl. At 21; see City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985).

The court therefore rejects Plaintiffs' contention that the state cannot regulate denturists under RCW 18.30. See id.; Gebbie, 828 P.2d at 1173-74; cf. Charron, 950 P.2d 532 (presuming constitutionality of denturist statutes and proceeding to examine its later amendments in this light). In addition to

dismissing this case under Federal Rule of Civil Procedure 8(a), the court dismisses this case under Rule 12(b)(6) for failure to state a claim for which relief can be granted.

III. CONCLUSION

For the reasons stated, the court GRANTS Defendants' motions to dismiss (Dkt. ## 41, 45, 47). The court dismisses this action with prejudice. The court STRIKES as moot all pending motions.

Dated this 2nd day of October 2007

James L. Robart

United States District Judge

***[Petitioners hereby take the opportunity to dispute the above paragraph. At no time, did the Petitioners ever claim the American Dental Association (ADA) and/or the Washington State Dental Association (WSDA) advocated policies that require denturist to be licensed. However, among numerous errors in judgment, Judge Robart

blatantly ignored the Petitioners common law rights to earn a living at their chosen occupation as well as RCW 18.120 and RCW18.122 requiring healthcare occupations to be regulated at the least restrictive level based upon potential for harm to the public. He also abused his judicial position by ignoring the decisions in the Edlin and Fox cases where Judge Clark ordered the State of Washington to hold full evidentiary hearings into the denturist issue, but instead of holding the hearings, blatantly ignored the judge's orders.]

United States District Court
Western District of Washington
At Seattle

KEITH ALLISON, et al.,

Plaintiffs, JUDGMENT IN A CIVIL CASE
Case No. C06-1761JLR

V.

CITIZENS FOR AFFORDABLE DENTURES, et al.,

Defendant.

__ Jury Verdict. This Action came before the Court for a trial by jury. The issues have been tried and the jury has rendered this verdict.

_X_ Decision by Court. This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

The court GRANTS Defentants' motions to dismiss (Dkt. ##41, 45, 47), and DISMISSES the claims against all Defendants with prejudice.

Dated this 2nd day of October, 2007.

Bruce Rifkin
Clerk

s/Mary Duett

Deputy Clerk

Appendix C

BATES

Technical College

CERTIFICATE OF COMPLETION

This is to certify that

Vallan Charron

Has completed a continuing education course in

Dental Laboratory Technology
Clinical Dental Technology
Partial Denture Construction and Design

Dates: May 2 & 4, 1995

Time: 5:30 to 8:30 pm. Hours: 6 Clock Hours

Joseph C. Rosendahl C.D.T.
Sr. Instructor Dental laboratory Technology

Appendix C-1

BATES

Technical College
Tacoma, Washington

CERTIFICATE OF COMPLETION

This is to certify that

Vallan Charron

Has completed a continuing education course in

Dental laboratory Technology
Clinical Dental Technology
Partial Denture Construction and Design
Clinical Juresprudence

Dates: May 2, 4, 9 & 11 1995

Time: 5:30 to 8:30 pm. Hours: 12 Clock Hours

Joseph C. Rosendahl C.D.T.
Sr. Instructor Dental Laboratory Technology

Appendix C-2

BATES

Technical College
Tacoma, Washington

CERTIFICATE OF COMPLETION

This is to certify that

Joe Berlanga

Has completed a continuing education program

Dental Laboratory Technology
Clinical Dental Technology
Partial Denture Construction and Design
Clinical Juresprudence

Dates: May 2 & 4 1995

Time: 5:30 to 8:30 pm. Hours: 12 Clock Hours

Joseph C. Rosendahl C.D.T.
Sr. Instructor Dental laboratory Technology

Appendix C-3

BATES

Technical College
Tacoma, Washington

CERTIFICATE OF COMPLETION

This is to certify that

William Lucich

Has completed a continuing education course in

Dental Laboratory Technology
Clinical Dental Technology
Partial Denture Construction and Design
Clinical Juresprudence

Dates: May 2 & 4, 1995

Time: 5:30 to 8:30 pm. Hours: 12 Clock Hours

Joseph Rosendahl, C.D.T.
Sr. Instructor Dental Laboratory Technology

Appendix C-4

BATES

Technical College
Tacoma, Washington

CERTIFICATE OF COMPLETION

This is to certify that

Kenneth Ashton

Has completed a continuing education course in

Dental Laboratory Technology
Clinical Dental Technology
Partial Denture Construction and Design
Clinical Juresprudence and Asepsis

Dates: May 2 to June 6 1995

Time 5:30 to 8:30 pm. Hours: 33 Clock Hours

Joseph C. Rosendahl C.D.T.
Sr. Instructor Dental laboratory Technology

Appendix C-5

BATES

Technical College
Tacoma, Washington

CERTIFICATE OF COMPLETION

This is to certify that

Hollis L. Elliott

Has completed a continuing education course in

Head and Oral Anatomy and Physiology, Oral Pathology, Microbiology, Medical emergencies, Dental Laboratory Technology, Clinical Dental Technology, Cardiopulmonary Resusication, Partial Denture Construction and Design, Clinical Jurisprudence and Asepsis

Dates: December 5 to January 25, 1996
Time: 5:30 to 8:30 pm. Hours: 30 Clock Hours

Joseph C. Rosendahl C.D.T.
Sr. Instructor Dental Laboratory Technology

Appendix C-6

BATES

Technical College
Tacoma. Washington

CERTIFICATE OF COMPLETION

This is to certify that

John S. MacKay

Has completed a continuing education course in

Head and Oral Anatomy and Physiology. Oral Pathology. Microbiology. Medical emergencies. Dental Laboratory Technology. Clinical Dental Technology. Cardiopulmonary Resusication. Partial Denture Construction and Design. clinical Jurisprudence and Asepsis

Dates: December 5 to January 25. 1996
Time: 5:30 to 8:30 pm. Hours: 30 Clock Hours

Joseph C. Rosendahl. C.D.T.
Sr. Instructor Dental laboratory Technology

Appendix C-7

Indian Tribal Denturitry Association

On recommendation of the Board of Directors
Pursuant to educational standards of the
Indian Tribal Denturitry Act, (under Public
Law 25-U.S.C. B1 and approved by the
United States Department of Interior, Bureau
Of Indian Affairs, by virtue of the authority
Vested in it, has issued to

John Scott MacKay

This
Certificate

And has granted this certificate as evidence of successfully passing written and practical examinations administered by qualified examiners, and pursuant to agreement by individual tribal consels, is hereby licensed to perform the practice of Denturitry on Tribal land with all rights and privileges and honors thereto appertaining

This Sixteenth day of September 1994

Bruce C. Anderson,
President I.T.D.A.

Wanda Anderson
Secretary I.T.D.A.

Mike Gillispie
Board Member/Examiner

Jesse H. Birdsall
Examiner

Appendix C-8

STATE OF WASHINGTON
Healthprofessions Quality Assurance Division
This certifies that the person named hereon is
authorized as provided by law as a

DENTURIST

ACTIVE

ROSENDAHL, JOSEPH CARLTON
1101 S. YAKIMA
TACOMA, WA 98405

Number	Date Issued	Expiration Date
062310	04-01-96	06-30-97
DN00000131		

Appendix C-9

Health Professions Quality Assurance
Credential Look Up Results
Data as of 12/30/2007 5:36:50 PM

Disclaimer

The Washington Department of Health presents this information as a service to the public. This site provides disciplinary actions taken and allows viewing/downloading of legal documents since July 1998. For additional verification information of actions prior to July 1998, contact the Customer Service Center at 360-236-4700. The site information comes directly from our database and is updated daily with all current information. The absence or presence of information in this system does not imply any recommendation, endorsement, or guarantee of competence of any health care professional, nor does the mere presence of such information imply a practitioner is not competent or qualified.

This site is a Primary Source for Verification of Credentials.

CURRENT PRACTITIONER INFORMATION

Name:	Rosendahl, Joseph C.
Year of Birth:	1943
Credential Number:	DN00000131
Credential Type:	Denturist
Current Credential Status:	Active
First Credential Date:	04/01/1996
Expiration Date:	04/03/2008
Last Renewal Date:	05/17/2007
Action Taken:	No

Appendix C-10

15 former denturist students sue Bates
Controversy: School says it already hired new teacher, though problems were solved.

Cheryl Reid – The News Tribune

Fifteen former Bates Technical College denturist students have sued the school, contending it did not provide adequate instruction.

"We just weren't given an education when we were promised one," said John Anderson, one of the ex-students filing the lawsuit. "It was the biggest nightmare of scholastic nightmares."

Bates spokeswoman Franclyn Heinecke said the school acted on student concerns as quickly as possible and though the issue had been resolved.

The school bought out the contract of the instructor the students complained about, ending his 15 year relationship with the school, she said.

"We did what they wante to have us do, and then nine months later we get this lawsuit," Heinecke said.

At issue is the first year of the school's denturist program.

A denturist is a professional certified to fit dentures. In 1994, voters passed a statewide initiative to give denturists the right to work without supervision. Before that, dentists had to supervise denturists.

In 1998, Bates started its denturists training program, one of the first in the nation and the only one in the state, Heinecke said.

A longtime Bates dental lab instructor was brought in to teach the course.

"He's the person who worked with the state and national denturists associations to develop this

course," Heinecke said. We felt he was very highly qualified for this course.

Some students disagreed.

"It was so disorganized," said Anderson, 43. "There was no written syllabus (class outline) to the program."

For the first few weeks, the instructor had students work on learning vocabulary words, Anderson said. But that stretched on much longer than it should have, Anderson complained.

"At the one-year mark, I realized, if I'm going to get out of here, I'd better start working on making my own way out," Anderson said.

The instructor became involved with a student and even began falling asleep in class, Anderson said.

Students also got almost no practical training with patients, Anderson said.

Desperate to learn something, the students took charge of the program, he said.

"We wrote the whole program," he said. "They're still using the syllabus we wrote."

Anderson had been a dental technician since he was 8, but needed a degree from a two-year college to be certified as a denturist, he said.

Others were not so well prepared, and Anderson said the college should have set some standards for people entering the denturist program.

Cont'd on page 6

The following was published in the records section of the Business Examiner in October 2000.

John Anderson and 19 other plaintiffs vs. Bates Technical College, Joe Rosendahl

Plaintiffs enrolled in defendant's program to provide education and training to become trained and qualified denturists, a program for which defendant

Rosendahl was instructor. Suit claims plaintiffs were told a new clinic would be built to house the program, that the training would comply with state accreditation standards and that they would be qualified for lucrative careers as denturists, earning "$75,000.00 a year and more." Filing claims Rosendahl was not qualified to teach the progam and that he refused to assist plaintiffs in completing a denturism education, that he subjected them to a hostile environment, threatened certain of them with physical violence and acted in a sexually harassing manner with certain plaintiffs. Suit also alleges Bates did nothing to respond to notice or his failings and misconduct, and refused to refund tuition or otherwise mitigate the damages. Alleged breach of contract and allegations of fraud and negligence give rise to claim for damages and costs.

Appendix C-11

SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR PIERCE COUNTY

JOHN ANDERSON, a married Individual; CHRISTINE ANDERSON, a married Individual; ANTHONY DELISLE, A single individual; Kimberly Naoko Risser, a married individual; MARK BIRD, a married individual; SHANTEL BIRD, a married individual; ROY JERRY CLARK, a single individual THOMAS GOEBEL, a married individual; TERESA GOEBEL, a married individual; SATOMI HIRAI, a single individual; JUSTIN KIGER, a single individual; KEVIN KOWALSKI, a single individual; SHANNON LESSARD, a single individual; BOBBI JO LANGFORD, a single individual; JOYCE SANDOVAL-BUTLER, a single Individual; DIANA SHELBY, a married Individual; WILLIAM SHELBY, a married Individual; LYNN LUCICH, a married Individual; WILLIAM LUCICH, a married Individual; JORGE VIZCARRA, a single Individual,

Plaintiffs,

v.

STATE OF WASHINGTON, BATES TECHNICAL COLLEGE, a Washington State technical college; JOE ROSENDAHL, a single individual.

Defendants.

No. 00 2 12147 0
Complaint For Damages

COME NOW THE above named Plaintiffs and by

way of claim state:

I. PARTIES

1.1 Plaintiff John Anderson is a married individual residing in Pierce County, Washington.

1.2 Plaintiff Christine Anderson is a married individual residing in Pierce County.

1.3 Plaintiff Anthony Belisle is a single individual residing in Curry County, Oregon.

1.4 Plaintiff Kimberly Naoko Risser is a single individual residing in Curry County Oregon.

1.5 Plaintiff Mark Bird is a married individual residing in Pierce County, Washington.

1.6 Plaintiff shantel Bird is a married individual residing in Pierce County, Washington.

1.7 Plaintiff Roy Jerry Clark is a single individual residing in Pierce County, Washington.

1.8 Plaintiff Thomas Goebel is a married individual residing in Pierce County, Washington.

1.9 Plaintiff Teresa Goebel is a married

individual residing in Pierce County, Washington.

1.10 Plaintiff Satomo Hirai is a single individual residing in Pierce County, Washington.

1.11 Plaintiff Justin Kiger is a single individual residing in Pierce County, Washington.

1.12 Plaintiff Kevin Kowalski is a single individual residing in Skagit County, Washington.

1.13 Plaintiff Bobbi Jo Langford is a single individual residing in King County, Washington.

1.14. Plaintiff Shannon Lessard is a single individual residing in Pierce County, Washington

1.15 Plaintiff Lynn Lucich is a married individual residing in Pierce County, Washington.

1.16 Plaintiff William Lucich is a married individual residing in Pierce County, Washington.

1.17 Plaintiff Joyce Sandoval-Butler is a single individual residing in Pierce County, Washington.

1.18 Plaintiff Diana Shelby is a married individual residing in Benton County, Washington.

1.19 Plaintiff William Shelby is a married individual residing in Benton County, Washington.

1.20 Plaintiff Jorge Vizcarra is a single individual residing in Pierce County, Washington.

1.21 Defendant Bates Technical College is a Washington State-funded technical college with its primary place of business in Pierce County, Washington.

1.22 Upon information and belief, Defendant Joe Rosendahl is a single individual residing in Pierce County, Washington

II. JURISDICTION AND VENUE

2.1 The Pierce County Superior Court has jurisdiction over all parties and claims in this action.

2.2 Venue is proper in Pierce County, Washington.

III. FACTUAL SUMMARY

3.1 In or before January, 1998, Bates Technical College ("Bates") began to advertise and promote a Denture Technician Program ("Program")

ostensibly designed to provide the education necessary for students to become trained and qualified denturists.

3.2 Bates hired defendant Joseph Rosendahl to assist in the design and promotion of the Program and to serve as the sole instructor in the Program.

3.3 At all times material to this action, Rosendahl was the authorized agent of Bates, acting on its behalf and under its authority. At all times material to this action, Rosendahl also acted on his own behalf.

3.4 Bates and Rosendahl, in the course of their extensive advertising and promotional efforts, made the following material representations to prospective students in the program:

(a) That the program would train the students to be professional denturists and prepare them for the State Board examination;

(b) That Rosendahl, the sole faculty for

the Program, had designed a program that would adequately train the students in denturism and denturist practice;

(c) That Rosendahl was trained and qualified to instruct the students in denturism, science, dental technicianry, and all other facets of denturist practice;

(d) That a new clinic was going to be built by Bates in 1998 for the sole use of the Program;

(e) That the enrollees would, upon completion of the Program, be competent and trained in the field of denturism, be able to pass the State Board examinations and have lucrative careers as denturists, earning "$70,000 a year and more;"

(f) That the Bates training would comply with State accreditation standards;

(g) That the Program would qualify the students for denturism licensing in other states.

including Oregon;

(h) That students in the Program would receive an associates of technology degree from Bates;

(i) That the curriculum would be developed in consultation with an advisory committee and the denturism industry and would be "continually revised" to conform to industry standards;

(j) That if students did not immediately enroll in the Program it would be canceled and the students would forfeit their chance of receiving denturism training from Bates.

3.5 Bates and Rosendahl made the foregoing representations with the specific purpose and intent of inducing members of the public to enroll in the Program.

3.20 Plaintiffs were not properly equipped or given the necessary materials to be instructed or trained in denturism

3.21 Despite its actual knowledge of Rosendahl's failings and misconduct, Bates did not act at any time or in any way to discipline Rosendahl, to modify Rosendahl's behavior, to replace Rosendahl as sole faculty or to secure competent instruction for students in the Program.

3.22 Despite its actual knowledge of Rosendahl's failing and misconduct, Bateds did not act at any time or in any way to refund Plaintiffs' tuition or to otherwise mitigate the damages suffered by Plaintiffs and other students.

3.23 As a result of Bates' failure to properly staff and manage the Program, Rosendahl's failure and inability to instruct the students, Rosendahl's inappropriate behavior, and Bates' failure to address or correct Rosendahl's incompetence and inappropriate behavior, Plaintiffs suffered physical, emotional, psychological and economic harm causing general and special damages in amounts to be proven

at trial.

3.24 Bates' failure to offer a Denturist program as required by the State and as advertised to Plaintiffs and the general public constitutes a violation of statutes, regulations, guidelines, and policies that apply to Bates as a state-funded educational institution.

IV. FIRST CAUSE OF ACTION: BREACH OF CONTRACT

4.1 Plaintiffs reallege paragraphs 1.1 – 3.24.

4.2 Contracts for education and training were formed between Bates and Plaintiffs when they enrolled in the Program. Under these contracts, Bates agreed to educate and train Plaintiffs in the field of denturism in compliance with the standards of the Washington State board of Denture Technology. Bates further contracted to provide Plaintiffs with sufficient instruction, facilities, and equipment to provide the students with adequate

education and training to be competent in the field of denturism.

4.3 The failure of Bates and Rosendahl to develop an appropriate syllabus and curriculum for the Program, to adequately plan the Program, to ensure the quality of the instruction, to provide necessary facilities and equipment, and to remedy problems that arose during the Program constituted a breach of these contracts, depriving Plaintiffs of the benefit of their bargain.

4.4 As a result of this breach of contract, Plaintiffs sustained contract, incidental, and consequential damages in amounts to be proven at trial.

V. SECOND CAUSE OF ACTION: FRAUD AND MISREPRESENTATION

5.1 Plaintiffs' re-allege paragraphs 1.1 - 4.4.

5.2 Bates made numerous representations to Plaintiffs regarding the Program, Bates Technical

College, the Washington State Denturist licensing program, and Rosendahl, knowing that these representations were false.

5.3 Rosendahl, acting both personally and as an agent for Bates, made numerous representations regarding denturism, the Program, Bates Technical College and the Washington State Denturist licensing program, knowing these representations were false.

5.4 These false and misleading statements were made by Bates and Rosendahl intentionally, recklessly, and negligently, with the specific purpose and effect of inducing Plaintiffs and others to act in reasonable reliance on the false and misleading statements and enroll in the Program. Bates and Rosendahl acted jointly and severally in making these false and misleading statements to Plaintiffs.

5.5 As a result of their reliance on the false and misleading statements made by Bates and

Rosendahl, Plaintiffs sustained both general and special damages in amounts to be proven at trial.

VI. THIRD CAUSE OF ACTION: NEGLIGENCE

6.1 Plaintiffs re-allege paragraphs 1.1 – 5.5.

6.2 In seeking State approval for, creating, planning, advertising, administering, controlling, and managing the Program, Bates failed to act with reasonable care under the circumstances.

6.3 In participating in, preparing for, planning, teaching, and administering the Program, Rosendahl failed to act with reasonable care under the circumstances.

6.4 Bates and Rosendahl acted jointly and severally in negligently planning, operating, and administering the Program.

6.5 As a result of Bates' and Rosendahl's negligence, Plaintiffs sustained both general and special damages in amounts to be proven at trial.

Wherefore, Plaintiffs pray for the following

relief:

A. entry of judgment in favor of Plaintiffs and against Defendants jointly and severally, decreeing that Defendants breached their contract with Plaintiffs.

B. entry of judgment in favor of Plaintiffs and against Defendants, jointly and severally, decreeing that Defendants made fraudulent misrepresentations of fact which were reasonably relied on, to their detriment by Plaintiffs.

C. Entry of judgment in favor of Plaintiffs and against Defendants, jointly and severally, decreeing that Defendants were negligent in their development and promotion of the Program and in their operation of the Program.

D. Entry of judgment in favor of Plaintiffs and against Defendants, jointly and severally, for general and special damages in amounts to be proven at trial.

E. Entry of judgment in favor of Plaintiffs and against Defendants, jointly and severally, to the fullest extent permitted by law, for the costs and attorneys fees incurred by Plaintiffs in maintaining this action.

F. For such other and further relief as the Court deems just and proper.

Dated this 23 day of September, 2000.

Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, P.L.L.C.

By: John R. Connelly, Jr. WSBA No 12183
John C. Guadnola, WSBA No 8636
Lafcadio H. Darling WSBA No 29963
Attorneys for Plaintiffs

Appendix C-12

State of Washington
Department of Health
P.O. Box 47879 – Olympia, Washington 98504-78778

RE: Bobbi J. Langford
Docket No.: 01-01-B-1080DN
Documents: Findings of Fact, Conclusions of Law, and Order on Brief Adjudicative Proceeding

Order Dismissing Adjudicative Proceeding

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: None

If you have any questions or need additional information regarding the information that was withheld, please contact:

Adjudicative Clerk Office
P.O. Box 47879
Olympia, WA 98504-7879
Phone: (360) 236-4677
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to Deputy Secretary's Office, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
BOARD OF DENTURE TECHNOLOGY

In the Matter of the Application for a License to Practice as a Denturist of: BOBBI J. LANGFORD Candidate Number CA00000239 Applicant	) Docket No. 01-01-B-1080DN) Findings of Fact, Conclusions of Law, and Order on Brief Adjudicative Proceeding

A brief adjudicative proceeding was conducted in this matter by Staff Attorney Margaret J. Gilbert, Presiding Officer, under authority delegated by the Secretary of the Department of Health.

This proceeding was conducted pursuant to RCW 34.05.482 through 494 and WAC 246-10-503 OR 11-430. The Presiding Officer reviewed the record in this matter and all documents submitted by the parties.

Section 1: PROCEDURAL HISTORY

1.1 Applicant, Bobbi J. Langford, took the practical

examination for license as a denturist in September 2000. She did not pass the examination and filed a request for Brief Adjudicative Proceeding on or about November 13, 2000.

1.2 The file reviewed by the presiding officer contained the following documents:

1.2.1 Application for denturist license received August 12, 1999.

1.2.2 Letter of August 17, 1999 to Applicant regarding examination fee and transcripts;

1.2.3 letter of September 10, 1999 setting September 1999 examination date and eligibility;

1.2.4 Letter of October 21, 1999 giving September 1999 examination scores;

1.2.5 Clinical examination records for candidate 000906 (L-6) dated September 16, 2000;

1.2.6 letter received October 27, 1999 from applicant requesting informal review;

1.2.7 Letter of November 2, 1999 regarding

informal review;

1.2.8 Letter of November 2, 1999 setting December 1999 examination date and eligibility;

1.2.9 Letter of November 19, 1999 giving results of informal review;

1.2.10 Letter of December 15, 1999 giving December 1999 examination score;

1.2.11 Letter of December 21, 1999 from Applicant requesting review of December 1999 examination score, with fax cover sheet;

1.2.12 Letter of May 8, 2000 regarding requirements for September 2000 examination;

1.2.13 Letter of May 15, 2000 from Applicant requesting to take September 2000 practical examination;

1.2.14 letter of August 28, 2000 setting September 2000 examination dated and eligibility;

1.2.15 Clinical examination records for candidate

000903 (L-3) dated September 16, 2000.

1.2.16 letter of September 28, 2000 giving September 2000 examination score;

1.2.17 Receipt for certified mail and Domestic Return Receipt dated October 3, 2000.

1.2.18 Letter received for certified mail from Applicant requesting informal review;

1.2.19 Letter of October 9, 2000 from Laslo;

1.2.20 Letter of November 3, 2000 to Applicant regarding result of informal review;

1.2.21 Letter of November 3, 2000 to Applicant regarding request for public disclosure;

1.2.22 Request for Brief Adjudicative proceeding Received November 13, 2000 with cover letter;

1.2.23 Letter of December 4, 2000 setting deadline for submission of additional materials for consideration in brief adjudicative proceeding; and

1.2.24 Letter from Applicant received December

13, 2000.

2.1 Applicant Bobbi J. Langford applied for a denturist license in the state of Washington in August 1999. She took the September 1999 examination and passed the written portion. She took but did not pass the September and December 1999 practical (clinical) examinations.

2.2 Applicant Langford was scheduled for and did take the denturist clinical (practical) examination on September 16, 2000. She scored two hundred seventy-two of six hundred forty-five (645) possible points, for a score of forty-two percent (42%). A score of seventy percent (70%) is required to pass the clinical examination. Applicant Langford was notified of her failing score by letter dated September 28, 2000.

2.3 Applicant Langford requested informal review by the Board. The Board did not find adequate reason to modify the examination score. See letter of November

3, 2000.

2.4 Applicant Langford requested a brief adjudicative proceeding on or about November 13, 2000. She was allowed until January 3, 2001 to submit additional materials. She submitted additional materials on or about December 13, 2000.

2.5 Applicant Langford contends that her work history substantiates her expertise, that scoring conflicts between examiners existed; that the materials prepared by her during the examination were of adequate quality; and that a set of dentures prepared by her for the same patient have fit well and performed satisfactorily.

Section 3: Conclusions of Law

Based on the above Findings of Fact, the Presiding Officer makes the following Conclusions of Law:

3.1 Matters appropriate for resolution by brief adjudicative proceeding are established by RCW

34.05.482 and WAC 246-11-420. WAC 246-11-420 provides:

> WAC 246-11-420 Application of brief adjudicative proceedings. (1) If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following: (a) A determination whether an applicant for a license meets the minimum criteria for an unrestricted license and the board proposes to deny such a license or to issue a restricted license; (b) A determination whether a person is in compliance with the terms and conditions of a final order previously issued by the board; (c) Any approval of a school or curriculum when such approval by the board is required by statute or rule; and (d) A determination whether a license holder requesting renewal has submitted all required information and meets minimum criteria for renewal.
> (2) If an adjudicative proceeding is requested in a matter not listed in subsection 91) of this section, a brief adjudicative proceeding may be conducted in the discretion of the presiding officer when it appears that (a) Only legal issues exist; or (b) Both parties have agreed to a brief proceeding; and (c) The protection of public interest does not require that the board provide notice and an opportunity to participate to persons other than the parties.

3.3 In the present case, Applicant Langford has several bases for his appeal. At least one (1) of those is a matter of fact: whether the materials prepared

during the September 2000 examination were of adequate quality.

3.4 Questions of fact are not appropriate for resolution by brief adjudicative proceeding. Since this matter is not appropriate for resolution by brief adjudicative proceeding, the matter should be converted to a full adjudicative proceeding.

Section 4: ORDER

Based on the preceding Findings of Facts and Conclusions of law, the Presiding Officer, hereby issues the following ORDER:

4.1 The examination appeal by Applicant Bobbi J. Langford is hereby converted to a full adjudicative proceeding. The matter is referred to the Adjudicative Clerk Office for scheduling pursuant to Chapter 246-11 WAC.

4.2 Pursuant to RCW 34.05.488, RCW 34.05.491 and WAC 246-11-550, within twenty-one days of the service of this order, either party may request an

administrative review of this order. The request must be in writing and state the reasons for requesting an administrative review. The request is deemed to be denied if, within twenty (20) days of the date of its submission, the Board has not made a disposition of the request or has not served written notice specifying the date by which it will act on the request for review.

4.3 Unless a party submits a written request for review to the Adjudicative Clerk Office, this order shall become the final order on the twenty-second (22nd) day after service of this order.

DATED: January 29, 2001

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
BOARD OF DENTURE TECHNOLOGY

Margaret J. Gilbert, WSBA No. 18913
Presiding Officer

Appendix C-13

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
OFFICE OF PROFESSIONAL STANDARDS

In the Matter of the Application for Licensure)	Docket No. 01-01-B-1090DN
BOBBI J. LANGFORD Candidate No. CA00000239)	ORDER DISMISSING ADJUDICATIVE Proceeding
Applicant	

Upon motion by Joline M. Recknagel, Attorney at Law, representing Bobbi J. Langford (the Applicant), Senior Health Law Judge Eric B. Schmidt, Presiding Officer for the Board of Denture Technology (the Board), issues the following:

I. PROCEDURAL HISTORY

1.1 In September 2000, the Applicant took the practical examination required for licensure to practice as a denturist in the state of Washington. The Applicant did not pass the practical examination.

1.2 On November 13, 2000, the Applicant

timely requested a brief adjudicative proceeding (BAP) to appeal from the grading of her practical examination.

1.3On January 29, 2001, the BAP PresidingOfficer issued an order converting the brief adjudicative proceeding to a full adjudicative proceeding to be heard by the Board.

1.4 On June 26, 2001, the Presiding Officer conducted a pre-hearing conference with counsel for the Applicant and the Department. On July 12, 2001, the Presiding Office issued Prehearing order No. 3, which in part re-scheduled the hearing date to August 30, 2001.

1.5 On July 23, 2001, the Applicant filed a motion to dismiss her appeal and to strike the August 30, 2001 hearing date.

II. CONCLUSIONS OF LAW

2.1 The applicant who has had the advice of counsel, has concluded it would be in her best interests to dismiss her appeal of the results of the

September 2000 practical examination.

2.2 The Presiding Officer concludes the Applicant knowingly and voluntarily wishes to dismiss her appeal.

III. ORDER

Based on the above procedural History and Conclusions of law, the presiding Officer orders as follows:

3.1 The adjudicative proceeding, in which the Applicant appeals the results of her September 2000 practical denturist examination, is DISMISSED WITH PREJUDICE.

3.2 The August 30, 2001, hearing date is STRICKEN.

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"Filing" means actual receipt of the document by the Adjudicative Clerk Office. RCW 34.05.010(6). This Order was "served upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).

DATED THIS 15TH DAY OF AUGUST 2001

ERIC B. SCHMIDT, Senior Health Law Judge
Presiding Officer

Appendix C-13

WASHINGTON DENTURIST ASSOCIATION

Bates Technical College
1101 South Yakima Avenue.
Tacoma, WA 98405-4895
Attn: Ray Marostica and Dave Dailey

Dear Sirs,

The Washington Denturist Association, WDA, has done a thorough search for an accredited college to provide qualified persons of the Northwest a chance to become a Licensed Denturist. Since the passage of Initiative 607, the Washington Denturist Initiative, approximately 50 persons have been licensed to practice our profession across the state. Currently to become a qualified candidate one must have 4,000 hours and/or 5 years of experience in denture technology and have taken accredited coursework in 10 different subjects. Upon providing the Department of Health with this information the candidate must pass a written and practical examination to demonstrate his/her skills and knowledge. After December 1996 this window will come to an end and all future licensed Denturists must pass an accredited 2 year curriculum to qualify to take the state examination for licensure in our state.

Bates Technical College is the only institution in the state of Washington that can readily adapt to provide the Pacific Northwest with qualified candidates to practice our profession. Currently Washington has only 50 licensed Denturists. The State of Oregon has over 120 licensed Denturists. We believe that Washington alone can sustain 150-200 licensed professionals. Denturists provide the people of Washington the opportunity for increased access for

their denture care at substantially lower prices. The WDA has a vested interest in accommodating the prompt start up of a Denturist College. Due to this interest we are very willing to provide as much cooperation and assets as possible to start a Bates School of Denturism.

The WDA would like to extend a sincere and exclusive endorsement to Bates Technical College for the origination Washington's first Denturists. College.

Thank you for your time

Vallan Charron
Executive Director, WDA

State of Washington
DEPARTMENT OF HEALTH
Health Professions Quality Assurance

February 9, 2000

Raymond Marostica
Director of Instruction, Downtown Campus
Bates Technical College
1101 south Yakima Avenue
Tacoma, Washington 98405-4895

Dear Mr. Marostica:

I'd like to extend my appreciation and thanks to both you and Dr. kais for your participation at the Board of Denture Technology meeting on January 14, 2000.

As you know, at that meeting, the Board of Denture Technology directed the Department of Health to examine concerns raised by former students regarding the denturist program offered at Bates Technical College.

The Board has appointed a subcommittee to assist with the Department of Health's examination of the following concerns:

- Instructors who lack the formal training necessary to insure students are provided adequate education, eg., students felt they were forced to teach themselves; no books assigned, unqualified instructors teaching pathology.

* Insufficient and inadequate clinical and laboratory instruction, e.g., no alginate

impression demonstrated.

- Insufficient number of patients available for students – e.g., only one patient available in eighteen months.

To assist the subcommittee, please provide me with your written response addressing the above concerns no later than March 15, 2000. Your written response should be directed to me at the following address: Department of Health, health Unit Three, Post Office Box 47867, Olympia, Washington 98504-7867.

Following their review of the materials provided, the subcommittee may wish to schedule a site visit; if so, you will be contacted.

If you have any questions, please feel free to contact this office at (360) 236-4859 or by writing me at the above address.

Sincerely,

GAIL ZIMMERMAN
Executive Director

C.J. Conlan, LD
123 N. Tower
Downtown Centralia
330-1825

Western Denture Center

July 9, 1998

Kirby Putscher
Program Manager
P.O. Box 47867
Olympia, WA. 98504

The fact remains that dental laboratory technicians have reached a level of clinical experience to be licensed as denturists. It is my concern that the bridge between a technician to denturist achieves the maxium education to raise the profession of Denturitry so that it will receive recognition by its peers and properly serve the public.

For those reasons, my questions are:

1. Who are the clinical instructors and what are their qualifications?

2. How do you qualify clinical procedures in a technical school?

3. The state Int. 607 requires quality practitioners, therefore, I propose a two year internship on all graduates.

Sincerely,

Appendix C-16

Charles J. Conlan

Professional Denture Clinic
Bernie Kopfer, DDS
250 N Mission
Wenatchee, WA 98801
(509) 664-7308 800-659-9797

July 13, 1998

Dear Kirby,

The following items are of concern to me about the Denture Technician program being offered by Bates Technical College.

1. Accreditation of this particular program by an agency competent to know and evaluate if what is being taught is meeting the objectives and requirements for this type of program.

2. Does Bates Technical College have a department that is specific to the medical basic sciences?

3. Education level and teaching experience of those individuals instructing in the basic sciences area.

Thank You,

Bernie Kopfer

Appendix C-17

BATES TECHNICAL COLLEGE
DENTURIST ADVISORY COMMITTEE
1999 – 2000

Vallon Charron

Director:
Ray Marostica – 1574

Secretary:
Chico Robles - 1571

Mark Mercer

James Davis
1020 SW Taylor Street, Suite 610
Portland, OR 97205
Wk – 503-224-1585
Fx – 502-224-1579
Hm – 503-297-7894

Wand Anderson
19410 8th Ave NE #102
Poulsbo, WA 98370
Wk – 360-779-1566
Hm – 360-307-3267

Harold Moss
930 Tacoma Ave Rm 1046
Tacoma, WA 98402
Wk – 253-798-7590
Hm – 253-759-1737

Shawn Murray
P.O. Box 38000
Florence, OR 97439
Wk – 514-997-9103

Bates
Technical College

March 10, 2000

Gail Zimmerman, Executive Director
Board of Denture Technology
Department of Health
Health Unit Three
P.O. Box 47867
Olympia, WA 98504-7867

Dear Ms. Zimmerman:

This correspondence is in response to your letter dated February 9, 2000. The bulleted itmes address your letter by restating your concern, followed by our responds and documentation.

*Instructors who lack the formal training necessary to ensure students are provided adequate education, e.g., students felt they were forced to teach themselves; no books assigned, unqualified instructors teaching pathology

Bates Technical College establishes hiring criteria for instructional faculty based upon WAC 131-16-080 through 098 and Certification requirements of the specific industry. Provided with this correspondence is a copy of the job description for this position which includes the requirements to be considered for hiring the Instructor of the Denturist Program.

The following documentation is provided:

1. Please see attached copy of Washington State Vocational Technical Certificate Number 1000S.

2. Please see attached copy of training record for Joseph Carlton Rosendahl.
3. Please see attached copy of the National Board for Certification Number C071570 which indicates that Joseph C. Rosendahl was certified in CD, PD, CB, CE and OR
4. Please see attached copy Washington State Denturist License number DN00000131 for Joseph Carlton Rosendahl
5. The College has no record that students had to teach themselves, although research and reporting is a viable form of instruction used by accredited schools, colleges and universities
6. Please see attached book and equipment list that was approved and submitted 10-19-98 and 5-99
7. Please se attached of Ad Hoc Advisory Committee.
   *Please see attached copy of recommendation from Washington Denturist Association
   *Please see attached copy of endorsement from Harold G. Moss, Pierce County Council member, District No. Four, Denturist Retired

Appendix C-19

United States Court of Appeals
For the First Circuit

No. 06-2623

CMI CAPITAL MARKET INVESTMENT, LLC; WILMINGTON TRUST COMPANY, AS TRUSTEE OF THE PR TAX-EXEMPT LEASE CERTIFICATE TRUST; RICHARD J. SCHMEELK; WILLIAM B. FINNERMAN; JIRA ASSOCIATIONS, LP.

Plaintiffs, Appellees,

STRONG CAPITAL MANAGEMENT, INC; LEHIGH MUNICIPAL LEASING, INC.,

Plaintiffs,

v.

MARYLIN GONZALEZ-TORO; CONJUGAL PARTNERSHIP AGUIRRE-GONZALEZ,

Defendants, Appellants

AA PUBLIC FINANCE CO., INC.; CROSS-BORDER LEASING CO., INC.; LIMITED FUNDING SERVICES, INC.; ALVIN F. AGUIRRE, in his individual and representative capacities; JOHN DOE, 03CV1770; ADVANCE OFFICE ELECTRONICS CENTER, INC. AND ROYAL INTERNATIONAL ELECTRONICS AND FURNITURE, INC.; INMOBILIARIA AA, INC.; A-Z INSURANCE COL,

Defendants

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
[Hon. Salvador E. Casellas, U.S. District Judge]

Before

Lipez and Howard, Circuit Judges,
And Smith, District Judge.

Ruben T. Nigaglioni, with whom Nigaglioni & Ferraiuoli law office, P.S.C. was on brief, for appellants.
Manuel A. Pietrantoni, with whom Casellas Alcover & Burgos, P.S.C. was on brief, for appellees.

March 18, 2008

HOWARD, Circuit Judge. In this tort and breach of contract suit, Marilyn Gonzalez-Toro ("Gonazlez") and the Conjugal Partnership Aguirre-Gonzalez (together, "appellants") failed to challenge plaintiffs' statement of material facts in support of a motion for summary judgment. Because the appellants did not counter the statement of material facts, the district court deemed the facts admitted, granted summary judgment, and imposed joint and several liability on the appellants for fraudulent acts committed by

Alvin Aguirre-Gonzalez ("Aguirre") and several corporations. We approve of the district court's decision to deem the uncontested facts admitted under Local Rule 56(e), and against that backdrop we affirm.

1. FACTS

On review of a motion for summary judgment, we take the facts in the light most favorable to the non-moving party, in this case the appellants. Cash v. Cycle Craft Co., 508 F.3d 680 (1st Cir. 2007). We likewise draw whatever reasonable inferences favor the non-moving party. Id. In this case, the familiar standard is qualified somewhat because the district court deemed admitted the facts contained in the movant's statement of material facts. We analyze that decision below, and as we find it within the district court's discretion we will not upset it here. Consequently, we review the facts as set out in the statement of material facts accompanying the

summary judgment motion. To the extent that other facts might cast doubt on them, those other facts are disregarded. This is because, on appeal from summary judgment, we consider the same record that was before the district court. Torres-Rosado v. Rotger-Sabat, 335 F.3d 1 5 (1st Cir. 2003).

The plaintiffs are various companies, trustees, and individuals who filed suit against Aguirre, Gonzalez, their conjugal partnership, and several corporations controlled by Aguirre. The suit alleged fraud, breach of contract, and various tortuous violations of the Puerto Rico civil code. Gonzalez and Aguirre were married throughout conduct complained of and when the complaint was filed – the pair divorced only after the plaintiffs filed suit. Their conjugal legal partnership has never been settled. According to the complaint, Aguirre and other defendants committed torts regarding leases they held with various municipal and government

entities in Puerto Rico. Some examples provide enough of the flavor of the complaint. The complaint alleged that Aguirre had assigned to more than one party, for value, the right to receive the same payments from some leases. And Aguirre allegedly concealed that some leases were in default and would likely remain in default, thereby selling the right to receive payments that would never come. Aguirre also allegedly misrepresented the amounts due under some leases, leading purchasers to pay more than they could ever receive.

Gonzalez was a director, officer, incorporator, or resident agent for all of the defendant corporations. She signed checks on their behalf and drew a monthly salary from one. After the divorce, Gonzalez continued to derive all her support from her husband, taking cash advances on a credit card he paid and receiving wire transfers totaling hundreds of thousands of dollars from corporations

he controlled. She understood this money to be an advance on the settlement of their conjugal legal partnership.

Aguirre never answered the complaint; he had decamped to the Dominican Republic, or perhaps Panama. Neither did the defendant corporations answer. Gonzalez answered on her own behalf and for the conjugal legal partnership.

The district court issued an attachment order against those defendants who had not answered the complaint. The appellants were directed to show cause why the order should not apply to them, and they did so to the district court's satisfaction. The district court declared Aguirre and the defendant corporations (the "other defendants") in default and issued partial judgment against them.

The plaintiffs moved to expand the scope of the attachment order so that it would apply to the appellants. Gonzalez testified at a hearing on the

motion and was cross-examined by her own counsel. On the basis of that hearing and evidence received into the record, the district court expanded the attachment order as requested.

The plaintiffs then moved for summary judgment against the appellants, citing the facts adduced at the attachment hearing. The plaintiffs, in conformance with Local Rule 56(b), submitted a statement of material facts to support their motion for summary judgment. The appellants submitted an opposition to the summary judgment, but failed to include an opposing statement of material facts as required by Local Rule 56(c). The district court noted the procedural failure, deemed the facts in the plaintiffs' statement to be admitted by the appellants, and on the basis of those facts granted summary judgment against the appellants.

2. Discussion

The appellants claimed in their opposition to

summary judgment, and claim again on appeal, that there is a genuine dispute about a material fact. But given their failure to challenge the plaintiffs' facts, in reality their argument is that the plaintiffs have failed to prove that they are entitled to judgment as a matter of law. Neither formulation of the argument avails.

a. The Anti-Ferret Rule

District of Puerto Rico Local Rule 56(c) is clear about the obligation of a party opposing summary judgment:

> A party opposing a motion for summary judgment shall submit with its opposition a separate, short, and concise statement of material facts. The opposing statement shall admit, deny or qualify the facts by reference to each numbered paragraph of the moving party's statement of material facets and unless a fact is admitted, shall support each denial or qualification by a record citation as required by this rule Local Rule 56(c). Rule 56(e) sets forth in mandatory terms the result of failure to follow Rule 56(c): "Facts contained in a supporting or opposing statement of material facts, if supported by record citations as required by this rule, shall be deemed admitted unless properly controverted." Local

Rule 56(e) (emphasis added).

The purpose of this rule is to relieve the district court of any responsibility to ferret through the record to discern whether any material fact is genuinely in dispute. We have upheld the application of the rule. Mariani-Colon v. Dep't of Homeland Sec., 511 F:.3d 216 (1st Cir. 2007). We review the "deeming order" for an abuse of discretion. Hernandez v. Philip Morris USA, Inc., 486 F.3d 1, 7 (1st Cir. 2007).

Here, the appellants failed to submit a separate statement of material facts. Nor did they anywhere in their opposition undertake to "admit, deny or qualify the facts by reference to each numbered paragraph of the moving party's statement of material facts." The appellants did include five facts in their opposition to the motion, but those facts are not explicitly directed at qualifying or contradicting specific facts in the plaintiffs' statement, nor are they presented in an

"opposing statement" "separate" from the appellants' conduct obviously falls within its scope. The district court therefore was within its discretion to deem the facts in the statement of material facts admitted.

When summary judgment is granted after a deeming order, we are bound by the order as well, provided it was not an abuse of the district court's discretion. If it were otherwise, then the task of sifting through the record for genuine issues of material fact would merely have been transferred from the district court, at summary judgment, to the appellate court, on appeal of that summary judgment. The anti-ferret rule would thus be rendered toothless. The appellants do not contest the district court's deeming order. Nor do they seek to controvert any of the facts in plaintiffs' statement. Rather, they claim that the facts therein and in the remainder of the record are insufficient as a matter of law to hold them liable for Aguirre's actions.

Although they couch the issue in terms of genuine issues of material fact, their real arguments are these: first, that the conjugal legal partnership should not have liability imposed on it because there is insufficient evidence in the record that it received the benefit of Aguirre's actions; and second, that the plaintiffs have failed to introduce evidence establishing that Gonzalez is Liable under Puerto Rico law for her husband's commission of these torts. We examine each in turn.

b. The Conjugal Legal Partnership

Under Puerto Rico law, the conjugal legal partnership can be held responsible for torts committed by one spouse as long as the action that gave rise to the tort was for the benefit of the conjugal legal partnership. "The generally acknowledge rule is that if the member's work is profitable for the community the liability will also fall on said community's property." Asociacion De

Proprietarious Del Condominio Villas De Playa I De Dorado Del Mar, Inc. v. Santa Barbara Company of Puerto Rico, Inc., 12 P.R. Offic. Trans. 41 (1982). This hs been the rule in Puereto Rico since Lugo-Montalvo v. Gonzalez-Manon, 4 P.R. Offic. Trans. 517 (1975). In that case, the Puerto Rico Supreme Court held the conjugal legal partnership shared the husband's potential liability in a malpractice action. The court reasoned:

> While [the husband] is married, everything he earns exercising his profession goes to the community property. In the course of his professional practice he may incur civil liability for malpractice. Should he be the only one liable with his separate property, or should he have the backing of the community for which he works? . . . [H]is professional economical endeavor benefits the bulk of the community property and the latter should also be liable when the obligation arise.

Id. at 525-26. So it is here. Alvin Aguirre earned money from his business activities, money that went to the conjugal legal partnership. His business activities included the fraudulent transactions at

issue. Therefore the conjugal legal partnership, which has yet to be settled, is liable. The appellant's contention that Aguirre was acting on behalf of the defendant corporations and therefore not for the benefit of the conjugal legal partnership is an argument that was squarely rejected by the Puerto Rico Supreme Court twenty-five years ago. "[R]espondents' argument that since it was not the marital community that directly received the income of engineer Ariel Guitierrez, but rather another artificial person who received it—Sociedad E.H.G. Arquitectos e Ingenieros—it is exempted from liability, fails to convince us." Asociacion De Proprietarios Del Condominio Villas De Plays I De Dorado Del Mar, Inc., 12 P.R. Offic. Trans. At 61.

This provides a basis for the liability of the conjugal legal partnership even if Gonzalez herself were not liable for the actions of her husband. But, as we establish below, the district court was right to

hold her liable as well.

c. Marilyn Gonzalez-Toro

The district court also found Gonzalez jointly and severally liable for the acts of her husband. The district court based summary judgment on Artice 1802 of the Puerto Rico Civil Code. "A person, who by an acto or omission causes damage to another through fault or negligence shall be obliged to repair the damage done." Id. The district court determined that Gonzalez negligently assisted the fraud. We instead affirm the judgment because the evidence supports a finding of "fault." The terms "fault" and "negligence" used here have specific meanings in the civil code context of Puerto Rico law. "Fault consists in the failure to exercise due diligence, the use of which would have prevented the wrongful result. Due diligence is that which one can expect from the average human being, the good paterfamilias." Jimenez v. Pelegrina Espinet, 12 P.R. Offic. Trans.

881, 886 (1982); see also Gierbolini v. Employers fire Ins. Co., 4 P.R. Offic. Trans. 1197, 1201-02 (1976) ("[F]ault requires the execution of a positive act causing a damage to another person different from the one who executed it, and, in turn, negligence supposes an omission producing the same effect, although both have in common that the act be executed or the omission incurred without an injurious intent." (internal quotations marks omitted) (citation omitted)). Further, it is an oft-cited precept of Puerto Rico law that "the concept of fault 'is as broad as the behavior of human beings, and that it includes any fault that causes harm or injury.'" Bonilla v. Chardon, 18 P.R. Offic. Trans. 696, 709 (1987) (quoting Colon v. Romero Barcelo, 112 D.P.R. 573, 579 (1982).

In granting summary judgment, the district court pointed to Gonzalez's behavior both during the frauds and afterwards. During the frauds, Gonzalez

was a director, officer, incorporator, or resident agent for all of the defendant corporations. After the divorce, when she knew Aguirre was subject to an attachment order and was being investigated for possible criminal charges, she continued to receive money from him.

On appeal, Gonzalez argues that the funds she received came from corporations othere than the defendant corporations, and that she cannot be subject to a judgment of negligence because she owed no duty to the plaintiffs. Considered in the context of the statement of uncontested material facts, neither contention avails her. The fact that the funds came from different corporations is irrelevant. The statement of uncontested material facts cited to Gonzale's own statements in the record that all or nearly all the money she received came from Aguirre. In the opposition to summary judgment, the appellants did set forth that the funds came from

other corporations. But because appellants failed to satisfy the anti-ferret rule, we accept those facts only to the extent that they do not contradict the facts deemed admitted by the district court.

Here, the two sets of facts are easy to harmonize. Gonzalez was not lying under oath when she said at the attachment hearing that her ex-husband had given her the money; and it is correct to say that the wire transfers came from corporations that were not defendants in this case. Even viewing these facts in the light most favorable to the appellants, the record is clear that Aguirre was using these other corporations to disburse funds to Gonzalez, funds she knew or should have known were subject to the attachment order.

The appellants spend considerable time in their brief making this out to be a case of piercing the corporate veil. But it is not. Rather, this is a case where the established facts point to a person aiding

her spouse by participating in the creation and administration of corporations used to defraud, and then aiding him again by receiving funds from him even though she knew he was under an attachment order and being sued to recover the money the money those corporations had fraudulently obtained. Even assuming that Gonzalez is not liable for the actions of defendant corporations by virtue of her role in them, she is still liable because she helped her husband carry out these schemes and helped him dispose of the money.

Turning to the appellants' contention that Gonzalez owed no duty to the appellees, it is true that the district court did not spell out the duty owed. Nevertheless, summary judgment was equally proper under the alternative "fault" standard in Puerto Rico law. "We may affirm a summary judgment decision on any basis apparent in the -18-record." Perry v. Wolaver, 506 F.3d 48 , 53 (1st

(quoting Uncle Henry's, Inc. v. Plaut Consulting Co., 399 F.3d 33, 41 (1st Cir. 2005)). Here, the uncontested material facts support summary judgment because no reasonable construction of them excuses Gonzalez from willfully receiving money from her ex-husband when she knew he was subject to the attachment order because she had defended against the same order. While perhaps her earlier actions, viewed alone, could have been put down to ignorance or a good-faith belief that her husband had enlisted her aid in incorporating and administering these corporations for legitimate business purposes, such an inference is rendered unreasonable by her subsequent actions. The district court properly assessed the facts in context and supportably found no contested issue of material fact to preclude summary judgment.

Affirmed.

Appendix C-20

Appendix – D

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent V. Pacific Health Center, Inc., a Washington for-profit corporation; Pacific Health Center Spokane, Inc., a Washington for profit corporation; and Monte Kline, individually and on behalf of his marital community, as President and Secretary of Pacific Health Center, Inc. and Pacific Health Center Spokane, Inc., Appellants.	No. 56886-8-1 DIVISION ONE Published Opinion Filed: September 25, 2006

AGID, J. – The trial court granted the State's motion for partial summary judgment, ruling that the defendants violated the Consumer Protection Act (CPA) because their alternative health care practice, based primarily on electrodermal testing, constituted the unlicensed practices of medicine, naturopathy, and acupuncture. The defendants appealed both the

trial court's ruling and the penalty it imposed, arguing the award was excessive.

We agree with the trial court's ruling that, although the defendants use alternative practice methods and terminology, their actual practices fall under the statutory definitions of medicine, naturopathy, and acupuncture. But practicing any of these disciplines without a license is not a per se CPA violation. The State failed to prove defendants did not have the level of competence they represented to the public or that any member of the public was even potentially injured by their actions. As such, the State did not prove a violation of the Act. Because the State did not prove defendants violated the CPA, the trial court also erred in imposing penalties under that statute. We affirm in part and reverse in part. (Emphasis added.)

Monte Kline and his close corporation, Pacific Health Center (PHC), have operated a health care

practice in Washington for over 15 years. They advertise through brochures, radio, the internet, and seminars. Their practice consists primarily of using electrodermal testing (EDT) to detect imbalances in "Qi," the Oriental medicine concept of energy flow in the body.[1] Essentially, EDT uses a computerized, signal emitting galvanic skin response (GSR) device to measure changes in electrical conductance at acupuncture points on a person's hands. Based on the imbalances detected during EDT, PHC employees recommend and provide various remedies including dietary changes, nutritional supplements, homeopathic mixtures and herbs.

On the opening page of their website, PHC ask

[1] Kline explains this energy flow as follows: "In terms of Oriental medicine theory, there is an assumption that there is an ideal energy flow level on the different acupuncture meridians that correlates with optimum health. And when you have an imbalance which could be characterized as an over energized under energized meridian, that creates a disturbance which... ultimately could create a specific health problem."

"Are you sick & tired...of being sick & tired?" They claim they can help with a variety of conditions, including candida, high cholesterol, allergies, and immune deficiencies. They describe EDT as follows:

> This revolutionary analysis technique...was pioneered by renowned West German physician, Reinhold Voll, M.D. in 1953. Various methods of Electrodermal Testing are currently used by over 40,000 medical doctors in Europe and by an increasing number of health practitioners in the United States.
>
> Electrodermal Testing involves taking simple, painless, electrical resistance readings on the surface of the skin at acupuncture points on the finger. The subtle differences in the electrical resistance detected by the sophisticated testing instrument determines specifics such as nutrient deficiencies, food and environmental sensitivities, toxicities, energetically weak organs....
>
> ...adding to the circuit homeopathic dilutions of various foods, environmental substances, nutrients, toxins, etc. [to] change the skin resistance readings, indicating a 'yes' or 'no' relative to a particular test. These filters, originally in test vials, are now recorded electronically in the computer for simpler testing.
>
> The computerized Electrodermal Testing allows the practitioner to test vitamins, minerals, enzymes, herbs, and homeopathic

> remedies for their "balancing effect" on the body, measured by their improving previously poor test readings. Thus, the guesswork of nutritional programs is eliminated.
>
> Electrodermal Testing has been described as a method of "conducting an electronic interview with the human body." Not too unlike the electronic measurements of Dr. McCoy of "Star Trek" fame, we believe Electrodermal Testing is the health care of the 21st century.

PHC offers a money-back guarantee. They also provide clients a form called "Superbill" that lists various "Diagnostic Categories" including allergy, P.M.S., fibromyalgia and multiple vitamin deficiencies.

PHC's radio program, seminars, and website expressly state that Kline is not a physician or naturopath and that his Ph.D. and expertise are in holistic nutrition.[2] They provide prospective clients with a letter stating that PHC is a "non-medical complementary health practice" which primarily use

[2]Kline's Ph.D. is a correspondence degree based on a volume of work he submitted over a number of years.

EDT, which "measures the body on a different level than conventional medicine tests[.]...It is considered an investigational technology....We encourage our clients to have regular physical examinations and appropriate conventional tests from their medical doctor." At the first appointment, the client signs a disclosure/authorization form stating that the Food and Drug Administration (FDA) has not approved the GSSR device to assess "nutritional deficiencies, food allergies, the presence of toxins Candida, Epstein-Barr virus, or weakness of organs or glands."[3] It also states:

> I understand that the staff of Pacific health center are not medical or naturopathic physicians. I understand that Electrodermal Testing does not fall under state licensure requirements, and the staff of [PHC] function as nutritional consultants, as allowed by law. I do not seek nor have the [PHC] staff offered medical diagnosis, cure, advice, or treatment for any particular disease[,] ailment, injury, infirmity, deformity, pain, or other physical or mental condition. I understand that [PHC] staff will not administer or prescribe any

> drugs or medicinal preparations. Rather, I understand this program focuses on building health through nutritional balancing, desensitization and detoxification.[4]

No one at PHC holds any Washington health practice licenses.

The State began an action against PHC and Kline on September 29, 2003, alleging violations of the Consumer Protection Act, chapter 19.86 RCW, in three separate counts. Count one alleged appellants made unsubstantiated claims about what EDT could do, count two alleged they misled the public into thinking they were physicians practicing medicine, and count three alleged that the GSR device was deceptive because the FDA had not approved it for their chosen use. On February 7, 2005, the Department of Health (DOH) alleged in an administrative action that PHC and Kline engaged in the unlicensed practices of medicine, naturopathy,

[3](Emphasis omitted.)
[4](Emphasis omitted.)

and acupuncture. On March 1, 2005, the State amended its complaint to delete the FDA-related count and add three new CPA counts, one for each of appellants' alleged unlicensed practices. DOH's administrative action was stayed, and on August 10, 2005, DOH filed an action for injunctive relief in Superior Court.

After the trial court consolidated the State and DOH actions, the State moved for partial summary judgment on the three alleged unlicensed practice-related CPA violations. At the hearing on the State's motion, the State said it was not asking the court to decide whether EDT was a valid modality, but only whether appellants were practicing medicine, naturopathy, and/or acupuncture. The court granted the motion, ruling that appellants violated the CPA by engaging in the unauthorized practices of medicine, naturopathy and acupuncture. The trial

judge specifically found a violation of the CPA based on the Bowers decision.[5] She said her ruling was a narrow one:

> I didn't think there were any factual questions as to what the practices of the defendants were. So there [were] no factual questions. The sole question that came before me today is: Are those practices then required to be licensed under the statute? And the three statutory provisions that the State cited were ones, as we all know, governing certain practices, either of medicine, naturopathic medicine or acupuncture. I found those acts, as a matter of law, fall under those statutes. I didn't go further than that. And I honestly don't know what's left of the complaint.

She "found as a matter of law, because of the type of practices, that it was a violation of the Consumer Protection Act. We did not go any further than that in making any determination or assessment about the validity or treatments of these tools or

[5]Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 675 P.2d 193 (1983). "Let me just state also for the record, just so that it's addressed specifically, and anybody reviewing this understands that under Bowers I do believe that this court's determination that there has been a lawyer's practice is a violation of the Consumer Protection Act."

modalities."[6] The court granted injunctive relief enjoining appellants' unlawful actions, but permitted appellants to operate as nutritionists as allowed under RCW 18.138. It ordered a civil penalty of $1 million and restitution in the amount of $701,630.11.[7] On November 29, 2005, the court entered a final judgment amount of $1,997,011.40, including civil penalties, restitution, costs and attorney fees.

[6]At the end of the hearing, after the parties discussed the proposed order, the court confirmed that she was not ruling on the validity of EDT as a practice method:

> I never reached the merits of this machine in terms of whether it was effective or not, whether it was science-based or not. That was not the issue. The issue was simply were his practices as he prescribed the materials the unlicensed -- or the practice, frankly, within the three statutes – are [they] actions that should be licensed under those three statutes? That is the sole basis for the decision....

[7]The court found appellants had committed 9,426 separate violations within the statute of limitations' allowable period on the State's claim. It awarded slightly more than $100 per violation. On September 30, 2005, the court amended the order

specifying the terms of the consumer restitution payment, and on October 11 the court entered an order clarifying that it had granted DOH's request for injunctive relief as part of the original summary judgment ruling.

DISCUSSION

1. Practice of Medicine, Naturopathy, and or Acupuncture[8]

We review summary judgment orders de novo, making the same inquiry as the trial court.[9] Summary judgment is proper only when there is no genuine issue about any material fact, and the moving party is entitled to a judgment as a matter of law.[10] We consider all facts and reasonable inferences in the light most favorable to the nonmoving party.[11] Questions of fact may be determined as a matter of law when reasonable minds can reach only one conclusion.[12]

[8]The State has moved to strike portions of appellant's reply brief, asserting that the "legislative facts" appellants cite are not facts at all and this court should not take judicial notice of them. They have no bearing on our decision, so we deny the State's motion to strike. The State has also moved for

sanctions under RAP 10.2(1) and RAP 18.9 because PHC mailed its reply brief late. RAP 18.9 provides that we may order a party to pay sanctions for failing to comply with appellate rules. The postal date stamp on the reply brief is April 27, 2006, two days after the April 25, 2006 extended deadline. Appellants argue they put the envelope in the mail on April 26 which was still one day late. But the State does not contend that it was harmed by the short delay, and we decline to impose sanctions for such a minor transgression.

[9]Jones v. Allstate Ins. Co., 146 Wn.2d 291, 300, 45 P.3d 1068 (2002).

[10]CR 56(c).

[11]Mountain Park Homeowners Ass'n v. Tydings, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994).

[12]Hartley v. State, 103 Wn.2d 768, 775, 698 P.2d 77 (1985) (citing La Plante v. State, 85 Wn.2d 154, 531 P.2d 299 (1975); Balise v. Underwood, 62 Wn.2d 195, 381 P.2d 966 (1963).

The first question this court must anser is whether PHC practices medicine, naturopathy, and/or acupuncture as the Washington legislature has defined those professions. Statutory interpretation and the question whether a statute applies to a particular set of facts are issues of law we review de novo.[1] When interpreting statutes, our

primary goal is to ascertain and give effect to legislative intent.[14] We begin with the statute's plain language and ordinary meaning, but also look to "the applicable legislative enactment as a whole, harmonizing its provisions by reading them in context with related provisions and the statute as a whole."[15] If the statute remains susceptible to more than one reasonable meaning, it is ambiguous and we may resort to construction aides.[16]

In Washington, anyone practicing medicine, naturopathy, or acupuncture must have a valid current license.[17] DOH may obtain an injunction preventing a party from practicing without a license.[18] To determine whether PHC's practice falls under any or all of the three licensed practices at issue, we have to determine what EDT is now and how PHC uses it. Like the trial court, we do not reach the merits of EDT as a health care modality, but instead only consider whether PHC's practice falls under the statutes.

[13]State v. Jackson, 91 Wn.App. 488, 491, 957 P.2d 1270 (1998) (citing La Plante v. State, 85 Wn.App. 81, 86, 871 P.2d 1123 (1994)), review denied, 137 Wn.2d 1038 (1999).

[14]Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 154 Wn.2d 224, 238, 110 P.3d 1132 (2005) (citing King County v. Cent Puget Sound Growth Mgmt. Hearings Bd., 142 Wn.2d 543, 555, 14 P.3d 133 (2000)).

[15]Id. at 239 Z(citing King County, 142 Wn.2d at 555, 560).

[16]State ex rel. Citizens Against Tolls v. Murphy, 151 Wn.2d 226, 2442-43, 88 P.3d 375 (2004).

[17]RCW 18.71.021 (medical doctor); RCW 18.36A.030 (naturopathy doctor); RCW 18.06.020 (acupuncture).

[18]RCW 18.130.190(6)

A client's initial appointment takes about an hour and a half and typically costs $395.[19] The client fills out a confidential client information form that asks, among other things, what "health complaints" the client seeks help with, whether he has seen "other doctors" for "this condition(s)," and for current and past prescription medications. During the EDT

procedure, the client sits across a desk from the "tester" who attaches the GSR device to the client and stimulates acupuncture points on the clients fingers with a Piezo stimulator. The tester takes an initial reading with nothing in the circuit, and then adds many different homeopathic dilutions consisting of foods, environmental substances and toxins to the circuit to determine if the client has energy imbalances or blockages. The client holds "the negative probe (a brass rod) of the instrument while [the] tester touches the positive probe to the [client's] opposite hand. Correct reading is based upon proper location of the acupuncture point, probe angle, probe pressure, probe stroke and smoothness of the reading." The tester then adds various nutritional supplements to the circuit "to determine if they are prone to re-balance or restore energy flows." A consultant does the second half of the testing.

[19]Our description of PHC's practice, including EDT, is based largely on their responses to the State's interrogatories.

"reviewing the client's health concerns, testing Other Disturbances, Energetically Weak Organs, Toxins, checking specific supplements to design a program, and explaining the program to the client." Positive EDT readings are recorded in writing on three different forms. There is a $99 follow-up appointment that lasts about an hour and involves all the same testing but does not include all the explanations.

Based on the EDT results for a given client, PHC employees fill out an "Electrodermal Test" form listing various specific deficiencies, such as vitamins, minerals, toxins and "other disturbances," including depression, stress and autoimmune problems. They fill out a "Food Avoidance List" checklist form listing the foods a client should avoid based on his EDT test. They also give the client a "Supplement Schedule" listing vitamins, minerals, herbs, digestive aids and homeopathic remedies the client should take based

on his EDT results. PHC employees make the homeopathic dilutions themselves and sell clients supplements and homeopathic remedies.

A. Practice of Medicine

PHC argues the trial court erred by ruling that they practice medicine. Under RCW 18.71.011, a person practices medicine if, among other things, he or she:

> (1) Offers or undertakes to diagnose, cure, advise or prescribe for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, by any means or instrumentality; [or]
> (2) Administers or prescribes drugs or medicinal preparations to be used by any other person.

No person may practice or represent himself or herself as practicing medicine without first having a valid license to do so.[20] The legislature passed Chapter 18.71 as an exercise of the police power to protect the health and well-being of the people of Washington.[21]

[20]RCW 18.71.021

[21]RCW 18.71.003(1)(2)

PHC asserts that they do not diagnose physical or mental conditions when the use EDT to determine the effects of particular substances on a person's energetic balances. They urge us to interpret the statute to exclude holistic, non-invasive health care, contending that a literal interpretation of the statute would cover virtually any service related to the human condition and would nullify related statutes' protections for oriental medicine, herbology, and nutritional counseling. The State argues that PHC's actual practices plainly fall within the statutory definition of practice of medicine. It contends there is no indication the legislature intended to cover only invasive diagnostic and treatment methods used for traditional western biomedical conditions when it regulated medical practice.

No cases interpret RCW 18.71.011(1), but an older

Washington case provides useful analysis, and several other jurisdictions have grappled with issues similar to ours. In State v. Greiner, the State charged a chiropractor with practicing without the necessary certificate.[22] At that time, it was a misdemeanor for any person to practice "medicine and surgery, osteopathy, or any other system or mode of treating the sick or afflicted in the state of Washington" without a certificate.[23] Grenier had the complaining patient "remove her street clothing...she diagnosed the patients ailments with the aid of a vibrator; she manually manipulated the supposedly diseased parts; she prescribed a dietary for the patient: she collected a fee; and advised the patient to return for further manipulation."[24] Grenier argued That her methods were "adjustments" rather than "treatments" and that chiropractic science was not a

[22]63 Wash. 46. 114 P.897 (1911).

[23]Id. at 49.

[24]Id. at 51

subject for State regulation. The court held her explanation was a "mere play upon words," and that chiropractic science was

> clearly a mode of treating the sick and afflicted. As such it is, by all authority, subject to regulation. To call the method of treatment "chiropractice" and the treatments given "adjustment" does not change its nature. If the practice has any beneficial purpose at all its purpose is to heal the sick and afflicted, and to regulate the practice of healing the sick and afflicted is unquestionably within the acknowledge powers of the state.[25]

In People v. Cantor, the California Court of Appeals considered whether a hypnotist practiced medicine.[26] The relevant statutory components were practicing or attempting to do so, or advertising or a holding out as practicing, any system or mode of treating the sick or afflicted, or diagnosing, treating, or prescribing for any ailment, disease, disorder, or other mental or physical condition of any person."[27] Cantor

[25]Id. at 51-52

[26]198 Cal. App. 2d Supp. 843 Cal. Rptr. 363 (1961).

[27]Id. at 845

advertised and told clients he would help with their headaches and weight problems. He tried to hypnotize them, put his hands on their heads in an attempt to relieve their conditions, and gave them instructions for self hypnosis. He told them he was not a doctor. The court held that the evidence showed the defendant was "advertising, diagnosing and treating[.]"[28] It further stated:

> It is our considered opinion that, in the record in this case, the practice of hypnotism as a curative measure or mode of procedure by one not licensed to practice medicine, amounts to the unlawful practice of medicine. While it may be that one day the use of hypnotism may be recognized sufficiently to warrant the legislature to license that practice, to date it has not done so. To the extent that appellant employed or attempted to practice his hypnotic powers, he was practicing medicine within the meaning of [the statute].[29]

In People v. Amber, the New York Supreme Court had to decide whether acupuncture fell within the following statutory definition of the practice of

[28] Id. at 849.

[29] Id. at 850

medicine within the meaning of [the statute].[29]

In People v. Amber, the New York Supreme Court had to decide whether acupuncture fell within the following statutory definition of the practice of medicine: "diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity or physical condition."[30] Amber argued that acupuncture was a unique treatment method not contemplated by the law and that only "Western allopathic medicine" fell within the statute.[31] The cour described acupuncture in detail based on a treatise provided by the defendant and acknowledge that it was a method and theory quite different from typical western medical treatment. But the court held that "a statute intended to regulate, limit or control the diagnosis and treatment of ailments must necessarily be broad enough to include the gamut of

[30] 76 Misc. 2d 267, 268, 349 N.Y.S.2d 604 (1973) (quoting N.Y. Education Law Section 6521). The statute had retained its broad language wince it was enacted in 1907. Id. at 269.

those known, whether or not recognized and even those not yet conjured."[32] It stated that it found

> nothing in the pertinent provisions of the [statute] which exclude, directly or by implication, any manner of diagnosis or treatment which is not embraced within the definition of "Western allopathic medicine".... Whether actions constitute the practice of medicine is dependent upon the facts and not upon the name of the procedure, its origins or legislative lack of clairvoyance.[33]

Importantly, the court noted that despite the Defendant's detailed description of acupuncture, he Had

> Scrupulously avoided [] the fact that a patient is necessarily involved and that such patient seeks treatment, not out of curiosity but only because he is suffering pain or other physical ailment; that before he, the patient, can expect the anticipated relief from the harmonious workings of the dual forces of Yin and Yang, a diagnosis must be made, if not to recognize a "Western" disease, then at least to determine the existence of a disharmony brought about by the disequilibrium of Yin and Yang; that a proper diagnosis or determination necessarily

[32]Id.

[33]Id.

> involves an expert ability to palpate the 12 pulses in order to read the condition of the 12 organs and thus determine which of the 12 meridians must be used to convey the Yin and Yang to the seat of disharmony with the object or restoring the vital essence of "ch'i", which is described as an harmonious mixture of Yin and Yang.....[34]

The court concluded, "[i]t may be, in fact, that acupuncture as a separately licensed healing modality is an idea whose time has come. It is not, however, for this court to declare its arrival. That task is for the Legislature."[35]

In People v. Rogers, defendant alternative health practitioner hooked clients up to a Phazx machine, a computer-based machine which used electrical impulses with attachments secured with Velcro.[36] The defendant assessed the conditions of

[34]Id. at 274.

[35]Id. at 275. Accord, People v. Roos, 118 Ill. 2d 203, 514 N.E.2d 993 (1987).

[36]249 Mich. App. 77, 641 N.W.2d 595 (2001)

various organs based on the machine's readings and recommended various dietary and exercise changes, along with remedies which she sold to the clients, based on the conditions the machine indicated.

Michigan defined the "practice of medicine" as the

> "diagnosis, treatment, prevention, cure or relieving of a human disease, ailment, defect, complaint, or other physical or mental condition, by attendance, advice, device, diagnostic test, or other means, or offering, undertaking attempting to do, or holding oneself out as able to do, any of these acts."[37]

Rogers argued only that Michigan's statutory definition of "practice of medicine" was overbroad and void for vagueness. There was no question her conduct constituted the practice of medicine under the statute. The Michigan Court of Appeals held that previous court decisions had narrowed the statute sufficiently to make it constitutional[38]

[37]Id. at 92 (quoting MCL 333. 17001(1)(d)).

[38]Id. at 101. PHC mentions that there are obvious constitutional issues in this case, but cite the Rules of Appellate Procedure limitations as the reason why they provide no supporting argument.

As in these cases, under the plain language of the statute, PHC employees do practice medicine. They offer services to people with various afflictions and tell them they can help them feel better. Appellants maintain that they merely identify and treat energetic, or "Qi," imbalances rather than actual physical or mental conditions. But they represent that they can help people with arthritis, immune deficiencies, high cholesterol, and other physical conditions. They say in their brochure that they can help with "problems" such as candida, headaches, depression, PMS, infections, and osteoporosis. They use EDT to test for nutrient and mineral deficiencies, energetically weak organis, toxicities, and food and environmental sensitivities. EDT is the "means or instrumentality" they offer and use to find and advise on these conditions. Based on the EDT results, appellants fill out a checklist identifying a client's conditions, not the client's "Qi"

levels. They then suggest, mix, and sell remedies intended to help relieve or cure those conditions. As appellants describe it, "Qi" is inextricably linked with physical and mental conditions. Further, the "Superbill" appellants provide clients includes a section titled "Diagnostic Categories" that lists various conditions and ailments including allergy, P.M.S., firbromyalgia, and multiple vitamin deficiencies. These conditions are assigned codes that correspond to classification numbers used by medical professionals when billing insurance companies.

PHC's terminology may differ from that of mainstream Western medicine, but ultimately they offer and use EDT to determine, or "diagnose," physical conditions or potential conditions, and then they suggest and provide remedies to address, or "treat," those conditions. They may diagnose conditions by analyzing energy levels, but they still diagnose conditions. As the Amber court stated,

"[w]hether actions constitute the practice of medicine is dependent upon the racts and no upon the name of the procedure, its origins, or legislatice lack of clairvoyance."[39] As in Amber, PHC's clients, or "patients," come to them for treatment because they suffer pain or discomfort or some other physical or mental manifestation, not because their "Qi" is out of balance. Before those clients can obtain the relief expected from a balanced "Qi," PHC employees must make a diagnosis, if not to recognize a "Western" condition, then at least to determine the existence of an imbalance brought about by various sensitivities or deficiencies.

Nothing supports PHC's view that the statute is intended to cover only diagnoses of serious conditions or invasive biomedical advice. Nor does anything demonstrate that the legislature intended to include only traditional Western medicine practices in its definition of "practice of medicine."

[39]76 Misc. 2d at 273.

We acknowledge appellants' concern that the statutes plain language could allow the State to regulate many practices the legislature could not have intended to regulate, such as elementary school teachers instructing students on health and hygiene or a Pilates instructor advising a client to hold in her stomach to prevent lower back pain. But those situations are not before us. Using EDT as an instrumentality to determine, or "diagnose," medical conditions in a patient and then recommending and selling specific remedies to that person to address those conditions, are practices that unquestionably fall within the valid police power the legislature exercised when it regulated the practice of medicine.

PHC argues that even if their actions fall under the plain language of the statute, related statutes and trends in public policy indicate the legislature could not have intended to require that they be licensed.[10] They contend the legislature

[10]Appellants cite various papers and declarations extolling the virtues and validity of EDT. But the validity of EDT is not at issue in this case.

Intended that citizens have the freedom to choose alternative medicine practices. The State points out that Washington does so by licensing various "alternative" practices, including naturopathy, acupuncture, and massage. As the State argues, the legislature chose to license alternative health care to protect consumers from deceptive or harmful practices.

RCW 18.71.030 enumerates 14 exemptions to the statute, including some activities which constitute the practice of medicine, such as dentistry and naturopathy, but which may be performed under another license.[11] No one at PHC is licensed in any discipline, so this provision does not apply to them. RCW 18.36.050 lists four exemptions from the

[11]RCW 18.71.030(4)

practice of naturopathic medicine, including the "practice of oriental medicine or oriental herbology, or the rendering of other dietary or nutritional advice."[12] But those exemptions only apply to the identified practices and do no exempt other practices, such as EDT, from licensure requirements. The same logic applies to the acupuncture statute, chapter 18.06 RCW, which excludes from acupuncture licensure requirements dietary advice based on oriental medical theory provided it is not given in conjunction with certain listed techniquest.[13] But, again, PHC is not merely giving dietary advice. PHC also cites the Dietitians and Nutritionists statute, chapter 18.138 RCW, which excludes health food

[12]RCW 18.71.030(4)

[13]RCW 18.06.010(1)(k)

[14]RCW 18.138.110.

stores from licensing requirements.[14] But the same

problem arises because PHC is not merely operating a health food store. Simply because some of their practices taken alone, would not require a license, does not mean they may engage in other activities which require one.

PHC contends that the "idea whose time has come is to allow alternative providers to provide health care for those who increasingly want it without being hampered by regulation." They point to other states that have enacted legislation allowing alternative providers to practice without a license provided their actions are not invasive. But our legislature has not yet embraced that policy. Even if EDT as a separately licensed, or even unregulated, health care modality is indeed an idea whose time has come, we must leave that decision to the legislature. PHC's actions constitute the practice of medicine under RCW 18.71.011.

B. Practice of Naturopathy

The legislature passed the naturopathy act, chapter 18.36A RCW, because it found it "necessary to regulate the naturopaths in order to protect the public health, safety, and welfare."[15] The legislature defines the practice of naturopathy broadly to include

> manual manipulation (mechanotherapy), the prescription, administration, dispensing, and use, except for the treatment of malignancies, or nutrition and food science, physical modalities, minor office procedures, homeopathy, naturopathic medicines, hygiene and immunization, non-drug contraceptive devices, common diagnostic procedures, and suggestion....[16]

Nutrition and food science "means the prevention and treatment of disease or other human conditions through the use of foods, water, herbs, roots, bark, or other natural food elements."[17]

[15] RCW 18.36A.010

[16] RCW 18.36A.040

[17] RCW 18.36A020(6)

As noted above, the statute exempts the practice of oriental medicine or herbology, or rendering other dietary or nutritional advice.[19]

PHC argues their practice consists primarily of nutritional counseling and oriental medicine. But they prescribe and mix specific homeopathic remedies based on a specific client's EDT results. They intend that those remedies will prevent and treat the particular conditions EDT indicates are present. They also put together food advoidance lists based on the EDT results. Because they do more than simply recommend homeopathics or render nutritional advice, PHC employees practice naturopathy under RCW 18.36A.040.

C. ACUPUNCTURE

The legislature defines "acupuncture" as a "health care service based on an Oriental diagnosis

[18]RCW 18.36A.030(1).

[19]RCW 18.36A.050(4).

and treatment to promote health and treat organic or functional disorders by treating specific acupuncture points or medians."[50] Acupuncture includes, among other things, the "[u]se of electrical, mechanical, or magnetic devices to stimulate acupuncture points and meridians," and "[d]ietary advice based on Oriental medical theory provided in conjunction" with certain techniques including electrical stimulation of acupuncture points and meridians.[51] Acupuncturists must be licensed.[52]

PHC argues they do not practice acupuncture because they do not use EDT to treat anything. They acknowledge that they use a "Piezo stimulator" in the EDT process to mildly, non-invasively stimulate acupuncture points and meridians for measurement Purposes rather than treatment, it is not as

[50]RCW 18.06.010(1)

[51]RCW 18.06.010(1)(b), (k).

[52]RCW 18.06.010(1)(b).

professional acupuncture. However, the plain language of the statute requires only that the electrical devices "stimulate acupuncture points and meridians" to qualify as acupuncture. It does not require that the electrical device actually treat anything.[53] PHC employees practice acupuncture under RCW 18.06.010.

II. CONSUMER PROTECTION ACT

The CPA prohibits unfair or deceptive practices.[54] Where there is no dispute about what a party does in its trade or business, whether those actions constitute an unfair or deceptive trade practice under the CPA is an issue of law this court reviews de novo.[55]

[53]RCW 18.06.010(1)

[54]RCW 19.86.020

[55]Robinson v. Avis Rent A Car Sys., 106 Wn. App. 104, 114, 22 P.3d 818 (citing leingang v. Pierce County Med. Bureau, 131 Wn.2d 133, 150, 930 P.2d 288 (1977); Sign-ZO-Lite Signs, Inc. v. DeLaurenti Florists, Inc., 64 Wn. App. 553, 560, 825 P.2d 714, review denied, 120 Wn.2d 1002 (1992); Grayson v. Nordic Constr. Co., 22 Wn. App. 143, 1488-49, 589

P.2d 283 (1978), reversed on other grounds, 92 Wn.2d 548, 599 P.2d 1271 (1979)), review denied, 145 Wn.2d 1004 (2001).

Conduct need not be intentional to be unfair or deceptive as long as it has "the capacity to deceive a substantial portion of the public."[56] The legislature has explicitly stated which statutory violations are per se CPA violations.[57] The unlawful practice of medicine is not a per se violation of the CPA.[58]

[56]bowers, 100 Wn.2d at 592 (citing Haner v. Quincy Farm Chems., Inc., 97 Wn.2d 753, 759, 649 P.2d 828 (1982))

[57]See, e/g/. RCW 19/190.030(3) (a violation of the Commercial Electronic Mail Act constitutes "an unfair or deceptive act in trade or commerce..for the purpose of applying the consumer protection act."); RCW 19.146.200 (a violation of the Mortgage Brokers Practices Act is a CPA violation); RCW 19.178.110 (a violation of the Going Out of Business Sales Act is a CPA violation); RCW 18.16.440 (collection agencies operating without a license or committing acts prohibited by the governing statute violate the CPA).

[58]See State v. Schwab, 103 Wn.2d 542, 548-49, 693 P.2d 108 (1985) (violations of statutes promulgated in the public interest do not constitute per se CAP violations) (citing Haner, 97 Wn.2d at 761-63).

In Bowers v. Transamerica Title Insurance Co., the Washington Supreme Court held that Transamerica's closing agents' preparation of certain closing documents constituted the practice of law, and that by preparing the documents the closing agents represented that they had the legal competence to do so.[59] The court held that

> [p]otential clients might readily and quite reasonably believe that Transamerica's closing agents were qualified to provide the expertise that could be expected from a lawyer. Such a belief, though reasonable, is not well founded. In fact, the record is clear that the closing agents possessed no such expertise. Transamerica's conduct was therefore unfair and deceptive.[60]

The Bowers Plaintiffs were damaged because Transamerica's unauthorized practice of law induced them to close real estate transactions without consulting legal counsel, who could have informed

[59] 100 Wn.2d 581, 675 P.2d 193 (1983)

[60] Id. at 592

them of dangers inherent in the transactions.[61]

The state maintains that it does not allege a per se violation of the CPA. Rather, it argues that PHCa violates the CPA by engaging in practices limited by law to licensed health care professionals. It also contends PHC has the capacity to deceive the public because, like the defendants in Bowers, they engage in practices for which they represent they have the expertise and training that only licensed professionals possess. PHC argues that even if their actions constitute the practice of medicine, that does not necessarily mean what they do has the capacity to deceive a substantial portion of the public. The trial court relied on Bowers in ruling that PHC violated the CPA.

Appellants represented themselves as being skilled in EDT and providing remedies based on EDT results. The State essentially argues that claim alone

[61]Id.

has the capacity to deceive consumers if the party's actions constitute the practice of medicine. In other words, when an unlicensed entity claims to and does perform some act covered by the practice of medicine statute, he or she is inherently less skilled than was represented to the public. This, the State asserts, is by definition a deceptive practice. But that does not account for people who, although unlicensed, have represented what they do correctly. The State effectively asks this court to adopt a per se rule that any unlicensed person who represents himself as skilled in a health practice modality violates the CPA if that modality constitutes the practice of medicine, regardless of whether his actual skill level matches his representations. That is not what Bowers held.

The defendants in Bowers represented that they were skilled in preparing closing documents, which constituted the practice of law, when in fact they were not. The crucial point of our CPA analysis

is not simply that they were unqualified to practice law, but rather that the record demonstrated they were, in fact, not skilled in preparing the very closing documents they held themselves out as qualified to prepare. It was not their unlicensed practice of law itself that violated the CPA, as that would be a per se violation, but instead their lack of skill in preparing and advising clients about the meaning of those documents.

Here, PHC employees used EDT to diagnose and treat conditions. This constitutes the practice of medicine, but the State has not proved they were in fact not skilled in using EDT. To prove a deceptive practice, the State must demonstrate that PHC employees were not skilled in doing what they represented to the public they could do. Instead, the State relies solely on the fact that appellants were not licensed as proof that they misrepresented their skill level. Bowers is not broad enough to support the State's position. Bowers held that by preparing

closing documents, the defendants had the defendants had represented to the public that they were competent to prepare those documents when they were not. Their false representation of their level of competence was the deceptive practice for CPA purposes, not their unauthorized practice of law. Competence to perform a particular act and being licensed to perform that act are two different things. A party practicing law or medicine without a license does not deceive the public if they do not claim to be licensed and are, in fact, competent or skilled in doing what they represent they can do. Someone who practices law or medicine without a license is not necessarily incompetent to perform the service that constitutes the practice of law or medicine. Under Bowers, the issue is whether that person in fact misrepresented his or her level of competence.

PHC represented to the public that they were

skilled in EDT and could help people with various problems and maladies. They specifically said they were not medical doctors and did not claim to be licensed to practice any discipline. To prove a CPA violation, the State had to show that PHC employees were not skilled in using EDT or helping people in the manner they represented. This the Statae failed to do. In fact, the record is replete with evidence that PHC's clients believed its employees were competent at what they did.

Further, although the State need not present evidence that PHC's practices actually caused harm, it has failed to produce any evidence that there is even a reasonable possibility of harm. PHC has practiced for over 15 years in Washington. In that time, the State has not received any consumer complaints. Indeed, the only input from citizens has been outrage that the State was prosecuting PHC. The State must at least demonstrate that appellants'

actions have a reasonable possibility of causing harm. Because it has not done so, its CPA claim cannot stand.

The trial court erred by ruling that appellants violated the CPA. Thus, it also abused its discretion by ordering penalties under the CPA.

ATTORNEY FEES

We award appellants reasonable attorney fees and costs because they are the prevailing party in the CPA action.[62]

We affirm the trial court ruling that appellants engaged in the practices of medicine, naturopathy, and acupuncture. We reverse the trial court's ruling that appellants violated the CPA and its award of penalties under the CPA. We remand for further proceedings consistent with this opinion.

WE CONCUR:

[62]The prevailing party in a CPA action is entitled to attorney fees and costs. RCW 19.86.040.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION ONE

STATE OF WASHINGTON Respondent v. PACIFIC HEALTH CENTER Inc., a Washington for-profit Corporation; PACIFIC HEALTH CENTER SPOKANE, INC., a Washington for-profit corporation; and MONTE KLINE individually and on behalf of his marital community, as President and Secretary of PACIFIC HEALTH CENTER INC. AND PACIFIC HEALTH CENTER SPOKANE, INC., Appellants.	) No. 56886-8-1)) Order Amending) Opinion)

The court has determined that the opinion filed on September 25, 2006 should be amended: Now, therefore, it is hereby

ORDERED that the opinion filed on September 25, 2006, be amended as follows:

DELETE footnote 52 on page 23 of the opinion

which reads:

[62] The prevailing party in a CPA action is entitled to attorney fees and costs. RCW 19.86.040.

REPLACE that footnote with the following footnote:

[62]The prevailing party in a CPA action may, in the discretion of the court, be awarded attorney fees and costs. RCW 18.86.080.

DATED this 17th day of October 2006.

Appendix D-1

United States Court of Appeals for the Federal Circuit

2006-5128, -5129

FIFTH THIRD BANK,

Plaintiff-Cross Appellant

v.

UNITED STATES,

Defendant-Appellant

Jerold J. Ganzfried, Howrey LLP, of Washington, D.C., argued for plaintiff-cross appellant. With him on the brief were Alan M. Grimaldi, and Jennifer R. Bagosy, of Irvine, California. Of counsel on the brief were Robert M. Bruskin, of Washington, DC, and James Hubbard, Fifth Third Bank, of Cincinnati, Ohio.

David A. Levitt, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington DC, argued for defendant-appellant. With him on the brief were Michael F. hertz, Deputy Assistant Attorney General, Jeanne E. Davidson, Director, Kenneth M. Ddintzer, Assistant Director, and Arelene Pianko Groner, John H. Roberson, and John J. Todor, Trial Attorneys.

Appealed from: United States Court of Federal Claims

Judge Christine O.C. Miller

United States Court of Appeals for the Federal Circuit

2006-5128,-5129

FIFTH THIRD BANK,

Plaintiff-Cross Appellant

v.

UNITED STATES,

Defendant-Appellant.

Appeal from the United States Court of Federal Claims in 95-CV-503, Judge Christine O.C. Miller

DECIDED: March 10, 2008

Before BRYSON, Circuit Judge, Plager, Senior Circuit Judge, and Keeley, Chief District Judge.

PLAGER, Senior Circuit Judge

This is another Winstar-related case, in which a banking institution alleges that it was financially injured, wrongfully by actions of the United States Government and its regulatory agencies. This particular case has a long history, resulting thus far

in eight published opinions by the trial court. The full details of the proceedings to this point can be found in the trial court's most recent opinion.[1] In the interest of judicial economy we will not repeat the detail here, but summarize it as necessary for this opinion.

Fifth Third Bank ("Fifth Third"), then Fifth Third Bank of Western Ohio, filed its original complaint against the United States ("Government") in 1995. Fifth Third acquired and is the successor to Citizens Federal Bank FSB ("Citizens"), the financial institution that actually suffered the alleged losses. For purposes of clarity we will refer to Citizens when it is necessary; otherwise we will refer to the plaintiff as Fifth Third.[2]

- Honorable Irene M. Keeley, Chieft Judge, United States District Court for the Northern District of West Virginia, sitting by designation.

[1] Fifth Third Bank v. United States, 71 Fed. Cl. 56 (2006) ("fifth Third IX).

2 For the reader curious about how a bank came to be called Fifth Third, the origins go back to 1863 when the Third National Bank was organized in Ohio. In 1888 the Queen City national Bank of Cincinati was renamed the Fifth National Bank These two merged in 1908 to become the Fifth Third National Bank of Cincinnati. The extensive history of the bank's changes in name and size through mergers and acquisitions, of which its acquisition of Citizens Bank is a part, is detailed on the bank's website at www.53.com. Today, Fifth Third Bank is owned by Fifth Third Financial Corporation which is owned by Fifth Third Bancorp (both Ohio Corporations).

Fifth Third sought damages from the Government for breach of contract related to the savings and loan debacle arising out of the enactment of the Financial Institutions Reform, Recover, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA"). FIRREA negatively affected the way certain financial institutions could utilize what was called 'supervisory goodwill,' an accounting method that earlier had been promised to them by federal regulators who sought their help in salvaging failing savings and loan institutions ("S&Ls") in the 1980s. FIRREA caused these rescuing and once-healthy

S&Ls to suffer significant losses, for which the United States Government was eventually held liable.

Since this court's 1995 opinion in Winstar Corp. v. United States,[3] affirmed by the Supreme Court,[4] these injured financial institutions have sought damages for the losses; the Government's litigators have doggedly fought them every step of the way. This court has been called upon to issue a number of opinions further defining the terms of the Government's liability and setting the theories underlying and the scope of the issues for which damages were to be paid. This case is one more in that long-running tale,[5] and the Government again insists on challenging virtually every finding and conclusion reached by the trial judge after extensive hearings and multiple carefully reasoned opinions.

[3] 64 F.2d 1531 (Fed. Cir. 1995) (en banc).

[4] United States v. Winstar Corp., 518 U.S. 839 (1996).

Because the trial judge in this case did not err, we affirm.

BACKGROUND

To understand where we are now in this case requires a short journey into where this case has been since it was filed in 1995. The basic case is typical of these Winstar related lawsuits, with the plaintiff bank's claim having two central thrusts. First, it is alleged that the Government is liable for breach of contract. Government regulators urged the then-healthy bank to help out in the nation's S&L crisis of the 1980's by acquiring one or more failing thrifts, even though that might mean the rescuing bank would itself develop a negative capital position. In exchange, the regulators promised that the bank could carry a book entry, called supervisory goodwill, that would count toward the bank's minimum regulatory capital requirement and thus avoid

5 There indeed is a tail on this tale-the Government's brief reports that there are still some

twenty-six remaining cases in dispute that have been designated as Winstar-related cases.

regulatory purgatory. When the enforcement of FIRREA undid that promise, the Government breached its contract with the bank. Second, as a result of that breach, the once-healthy bank sustained serious losses in its attempt to meet the new regulatory requirements. The banks and their lawyers and accountants in this and other Winstar cases were most creative in finding multiple losses based on many damages theories.

In its first substantive ruling in this case, the trial court denied motions by both parties for summary judgment on liability.[6] The trial court thereafter granted the Government's motion for reconsideration to address an issue the trial court had deemed abandoned in its first decision. In that second ruling, the trial court concluded that a

[6]Fifth Third Bank of W. Ohio v. United States, 52 Fed. Cl. 264 (2002) ("Fifth Third I").

Government regulatory agency, the Federal Home Loan Bank of Cincinnati ("FHLB-Cincinnati"), possessed implied actual authority to bind the Government to the claimed contract.[7]

Later, the trial court granted the Government's motion for summary judgment as to certain categories of damages sought by Fifth Third.[8] First, the trial court rejected the Bank's claim for expectancy damages in the form of profits that Citizens would have received in the absence of the breach by leveraging goodwill in order to make more loans and investments. Because the Fifth Third failed to identify specific investment opportunities, said the trial court, the lost profits claim was too speculative and unforeseeable.

The trial court also granted summary

[7]Fifth Third Bank of W. Ohio v. United States, 52 Fed. Cl. 637 (2002) ("Fifth Third II").

[8]Fifth Third Bank of W. Ohio v. United States, 55 Fed. Cl. 223 (2003) ("Fifth Third Iv").

judgment against Fifth Third on its claim for an alternative form of expectancy damages under the doctrine of cover. Under this theory, Fifth Third would have calculated the hypothetical cost of replacing goodwill with tangible capital in the form of preferred stock. The trial court rejected this claim as speculative and unrealistic because at the time Citizens was a mutual association and could not have issued stock without converting to a stock corporation.

In addition, Fifth Third sought restitution damages based on either the net liabilities assumed by Citizens or the Government's actual historic cost in dealing with failing thrifts. The trial court ruled on summary judgment that the first method was contrary to established law and that the second lacked a basis in reality. Alternatively, Fifth Third asked for reliance damages based on the liabilities assumed by Citizens, a model also rejected by the

trial court as contrary to established law.

Finally, Fifth Third requested what it referred to as "incidental damages," which in reality were another form of expectancy damages. Fifth Third alleged that if Citizens had not been forced to sell its Cincinnati branches to Banc One in 1991 due to the breach caused by FIRREA, it would have received additional proceeds by selling them in 1998 when the remaining branches of Citizens were sold to Fifth Third, and the Cincinnati branches would have earned profits for Citizens in the intervening years.

Fifth Third further alleged that, as a result of the breach of contract caused by FIRREA, Citizens in January 1992 was forced by regulators to convert from a mutual to a stock company to achieve compliance with regulatory capital requirements. Fifth Third contended that, absent the breach, Citizens would not have converted until, at the

earliest, August of 1993, when under more favorable market conditions it would have sold its stock at a higher price.

The trial court concluded that these claims for incidental damages did not suffer from the same speculative characters as the other expectancy damages theories and, denying the Government's motion for summary judgment with regard to these claims, allowed them to go forward.

The case proceeded to trial on the questions of liability and damages. At the close of Fifth Third's case-in-chief, the Government moved for judgment on partial findings on both issues pursuant to Court of Federal Claims Rule 52(c). While the trial court denied the motion with respect to damages, the court granted the motion with respect to liability.[9]

The issue regarding liability was whether, at the Government's urging, Citizens in acquiring four failing thrifts between 1982 and 1985 had relied on a promise from the Government that it would have the

supervisory goodwill accounting method to keep itself in regulatory compliance over the years, despite the book deficits the acquisition caused. In short, was there a binding contractual promise by the Government which was breached by the enactment of FIRREA, the enforcement of which denied the long term use of that accounting method?

Much of the evidence at trial regarding liability was based on witnesses' recollections, with oral and deposition testimony describing the communications between Citizens and FHLB-Cincinnati that led to Citizens' acquisition of the failing thrifts. There was testimony that both parties believed they had entered into a contract concerning the special accounting treatment of supervisory goodwill. The somewhat sparse written documentation was consistent with the understanding.

[9]Fifth Third Bank of W. Ohio v. United States, 56 Fed. Cl. 668 (2003) ("Fifth Third VI").

The trial court, however, was concerned that the witnesses' testimony seemed to be rote in nature and that the written evidence supporting the testimony was contained in what the court described as routine agency documents. Based on its consideration of the evidence, the trial court concluded that the parties had not formed a contractual relationship.

When the case was appealed to this court, we reversed the trial court's ruling on liability.[10] We concluded that, when viewed in the light of the regulatory and economic context in which the parties negotiated and in which their understandings were reached, the evidence was sufficient to establish that the parties created contractual obligations which included the extended amortization of supervisory goodwill and the counting supervisory goodwill as an asset for capital compliance purposes. We therefore held that the Government was liable for breach of

contract as a result of the enactment and enforcement of FIRREA.

We addressed two additional issues on appeal. First, we agreed with the trial court that FHLB-Cincinnati had actual authority to bind the Government to a contract involving supervisory goodwill. We also affirmed the trial court's ruling on summary judgment barring Fifth Third's cover damages claim as speculative because it was based entirely on hypothetical costs of issuing preferred stock, and unrealistic because at the time Citizens was a mutual organization and could not issue stock. The case was remanded to the trial court for a determination of damages, if any, to be awarded.

A second trial took place in early 2006, now eleven years after the original complaint was filed. The trial resumed where the first trial ended, i.e.,

[10]Fifth Third Bank of W. Ohio v. United States, 402 F.3d 1221 (Fed. Cir. 2005) ("Fifth Third VIII").

with the Government's case-in-chief, followed by Fifth Third's rebuttal. Because all of Fifth Third's other damages theories had been precluded by the earlier rulings, the trial focused on the claim for incidental damages.

As noted earlier, the claim for incidental damages was based on two specific events that occurred in the early 1990's shortly after the enactment of FIRREA. They involved, first, the sale of Citizens of its branches in Cincinnati, and second, a conversion of Citizens' ownership from mutual form to stock form. Both events were the result of a capital plan agreed upon by Citizens' ownership from mutual form to stock form. Both events were the result of a capital plan agreed upon by Citizens and the Office of Thrift Supervision, a government agency established by FIRREA as the primary thrift regulator. The purpose of the plan was to restore Citizens to profitability and to compliance with the

federal minimum regulatory capital requirements imposed by FIRREA.

The dispute that Fifth Third and the Government are now engaged in is whether these events-the Cincinnati branch sale and the mutual-to-stock conversion-were caused by the Government's breach of the promises earlier made by the Government regulators regarding accounting of supervisory goodwill, and, if so, how any damages should be measured. Fifth Third's position is that the sale and conversion would have occurred, if they occurred at all, at a time of Citizens' own choosing when market conditions were favorable, rather than at the times imposed upon the bank by the regulators in response to the requirements of FIRREA. Having been forced to sell the Cincinnati branches and convert from a mutual to a stock organization prematurely, Citizens allegedly suffered substantial losses in the form of reduced proceeds

and other lost profits.

After trial on these issues, the trial court published a 45-page opinion with extensive findings of fact and a thorough legal analysis of Fifth Third's damages claims. The court awarded Fifth Third substantial damages for the losses sustained by Citizens, including about $8.5 million for lost profits from the sale of the Cincinnati division (after certain adjustments) and about $44.2 million for premature conversion. Following an adjustment to compensate for the taxes Fifth Third will owe on the premature conversion damages, the total damages award came to about $76.5 million, which, as the trial court noted, is a relatively modest sum in the context of Winstar litigation.

The Government appeals the entire damages award. Fifth Third cross-appeals the trial court's denial of a portion of its claim related to the sale of the Cincinnati division. We have jurisdiction over the

appeal under 28 U.S.C. Section 1295(a)(3).

DISCUSSION

A. Overview

Expectancy damages are intended to make a non-breaching party whole by providing the benefits expected to be received had the breach not occurred. Glendale Fed. Bank, FSB v. United States, 239 F.3d 1374, 1379 (Fed. Cir. 2001) (citing Restatement (Second) of Contracts Section 344(a) (1981)). Expectancy damages include lost profits but are not limited to them. Id. As a general proposition, a party is entitled to expectancy damages if the party satisfies three requirements. First, the party must show that the claimed damages were within the realm of reasonable foreseeability at the time the contract was entered into (the foreseeability requirement). Cal. Fed. Bank v. United States, 395 F.3d 1263, 1267 (Fed. Cir. 2005). Second, the party

must establish that the damages would not have occurred but for the breach (the causation requirement). Id. Third, "the measure of damages must be reasonably certain, although if 'a reasonable probability of damage can be clearly established, uncertainty as to the amount will not preclude recovery'" (the proof of damages to a reasonable certainty requirement). Id. (quoting Glendale Fed. Bank v. United States, 378 F.3d 1308, 1313 (Fed. Cir. 2004)).

In the Winstar litigation context, forseeability, causation, and proof of damages to a reasonable certainty are all issues of fact that we review for clear error. Home Sav. Of Am., FSB v. United States, 399 F.3d 1341, 1347 (Fed. Cir. 2005).[11] Clear error is

[11] But cf. Home Sav. Of Am., 399 F.3d at 1347 (suggesting that we review the trial court's methodology for calculating damages for abuse of discretion). Since in most respects the clear error and abuse of discretion standards are similarly deferential, we need not try in this case to separate the applied methodology from the process of fact-finding.

among the more deferential standards an appellate court applies to the work of a trial court—a finding is clearly erroneous only when "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948). In the case before us, the liability issues were settled by our prior opinion. The damages issues, to the extent there are questions about the applicable rules, fall within the well-established principles of our prior cases. The only issues then on appeal are whether the trial court in its extensive and thorough fact findings and conclusions committed clear error. Given the deference we grant to trial courts in their fact-finding role, this is a heavy burden for the Government to carry.

B. Causation

We examine first the Government's arguments

regarding causation. The Government argued at trial that several factors other than FIRREA, such as alleged mismanagement of the thrift and overall lack of profitability, let do Citizens' actions and the times they were taken, and that in any event the regulatory pressure to raise capital and downsize would have been the same absent the breach. The trial court disagreed, finding that Citizens would not have sold the Cincinnati division in 1991 or converted to stock form in January 2992 but for the breach caused by FIRREA. Fifth Third IX, 71 Fed. Cl. at 87-90.

On appeal, the Government asserts that the trial court erred in concluding that regulators would not have been concerned with Citizens' level of tangible capital even in the absence of the breach, and would not have required Citizens to take steps to recapitalize or downsize when they did. Recreating the past—who thought what, when, and why—is quintessentially a question of fact. Though, as in

most fact-based trials, one could read the evidence different ways and reach different conclusions, the trial court's findings are supported by ample evidence, including the contemporaneous circumstances, documentation, and witness testimony expressly credited by the trial judge. On this record there is clearly no basis on which we could say that the trial court committed clear error in its finding of but-for causation.

C. Foreseeability

The trial court found that the damages caused by the sale of the Cincinnati branches and the reduced conversion damages were reasonably foreseeable at the time of the contract, based on the following analysis. Id. at 88-90. First, the court found that a prudent regulator would have been aware that removal of supervisory goodwill would cause Citizens to become capital deficient, which would require Citizens to raise capital to comply with capital

requirements. The court found that a prudent regulator would have known that the principal ways of raising capital were sales of assets and conversion of ownership to stock form, and would have understood that the timing of these actions could affect the amount of proceeds received. Thus, the trial court concluded, a prudent regulator would have foreseen that a breach of the accounting method promise and the consequences thereof would take away Citizens' ability to choose the timing of its sale of the Cincinnati division and its conversion to stock form, and that this could cause damages. Furthermore, the trial court found that the regulators in this case actually knew what would happen if the Government breaches its contract, and therefore actual foresight existed.

The Government contends that damages based on the 1991 sale of the Cincinnati branches were not reasonably foreseeable because the higher deposit

premium[12] Citizens was able to obtain in 1998 was due to an improvement in the economy, an event that was unforeseeable at the time of the contract. Similarly, the Government argues that the damages resulting from the reduced conversion proceeds were not reasonably foreseeable at the time of the contract because the calculation of reduced proceeds was based on the increase in the thrift stock price market index between January 1992 and August 1993. In the Government's view, regulators could not have foreseen that the conversion market would improve during that time period.

At times the Government couches this argument in terms of proximate causation—the damages were caused by changed economic

[12] In a branch sale, the seller theoretically gives the buyer the branch's deposit liabilities (e.g., savings accounts) and an amount of cash equal to these liabilities. However, depending on the negotiated value of the liabilities, the buyer may agree to take something less than the full amount of cash. In that case, the difference is the deposit premium.

conditions and thus were not proximately caused by the breach. Since both arguments relate to the ability of the Government to contemplate at the time of the contract the nature of Citizens' injuries, we will address both in terms of foreseeability. See Old Stone Corp. v. United States 450 F.3d 1360, 1375 (Fed. Cir. 2006) ("Because these two doctrines are not meaningfully distinct, at least in the context of the case before us, we analyze them under the rubric of foreseeability.").

The trial court did not clearly err in concluding that the damages in this case were foreseeable. The trial court's basic findings supported by the record and unchallenged by the Government, are sufficient to show foreseeability. Fifth Third was not required to demonstrate that the Government could have foreseen at the time of contracting that the market conditions might be less than favorable when it later breached the contract.

We recently rejected a similar argument in Citizens Federal Bank v. United States, 474 F.3d 1314 (Fed. Cir. 2007). In that case, we affirmed the trial court's finding that the plaintiff was entitled to compensation for the negative tax consequences incurred in raising capital to replace lost goodwill. Id. at 1321. We held that the plaintiff was not required to prove that the tax consequences were foreseeable; all that was necessary was a showing that the need to raise capital in the event of a breach was foreseeable. Id. ("If it was foreseeable that the breach would cause the other party to obtain additional capital, there is no requirement that the particular method used to raise that capital or its consequences also be foreseeable."). Fifth Third has made that showing here and is not required also to show that the precise economic conditions a the time regulators forced Citizens to raise capital were foreseeable.

As the trial court correctly held, Old Stone

does not support the Government's cause. The plaintiff bank in that case was forced to raise capital after FIRREA by selling assets, and we affirmed the trial court's award of damages associated with that activity. 450 F.3d at 1367-70. But the bank had other problems unrelated to the loss of goodwill and was eventually seized. The trial court awarded damages related to the breach. Id. at 1376. We explained that for the seizure to be foreseeable, a number of specific facts had to be established. Id. Based on the lack of evidence in the record, we concluded that the bank had failed to prove that the extended chain of causation was foreseeable. Id. Here, in contrast, Fifth Third is not claiming damages due to a seizure or other comparable event far removed from the breach; the damages compensate directly for the steps taken by Citizens to achieve regulatory compliance in the wake of FIRREA. See also Citizens, 474 F.3d at 1321-22 (distinguishing Old

Stone on similar grounds).

The Government's reliance on Estate of Berg v. United States, 687 F.2d 377 (Ct. Cl. 1982), is also misplaced. That case is not about foreseeability or proximate causation at all, but instead deals with the proper time for measuring damages. Moreover, it does not stand for the proposition that an upswing in the market value of an asset following a breach is irrelevant to the damages caused by the breach. The court in Berg noted two general rules. First, the goal of expectancy damages is to place the injured party in as good a position as he would have been had the breaching party performed the contract. Id. at 379; see also Restatement (Second) of Contracts Section 344(a) Z(1981). Second, the proper date for measuring damages is usually the date of the breach. Berg, 687 F.2d at 380. In Berg, the plaintiff was made whole by valuing the bonds at issue as of the date of the breach: calculating the bonds' fair market

value as of the later date urged by the Government would have reduced the damages award and would not have fully compensated the plaintiff for the Government's breach. Id.

In some cases, however, strict application of the second rule may not result in the most accurate assessment of expectancy damages. See Energy Capital Corp. v. United States, 302 F.3d 1314, 1330 (Fed. Cir. 2002) ("That rule does not apply, however, to anticipated profits or to other expectancy damages that, absent the breach, would have accrued on an ongoing basis over the course of the contract."). A court may consider post-breach evidence when determining damages in order to place the non-breaching party in as good a position as he would have been had the contract been performed. See id.; Castle v. United States, 48 Fed. Cl. 187, 207 n.16 (2000), aff'd in part, rev'd in part on other grounds, 301 F.3d 1328 (Fed. Cir. 2002); see also Restatement (Second of Contracts Section 352 cmt. B, illus. 6

(1981) (using post-breach evidence to establish lost profits). Here the trial court found that, but for the breach, Citizens would have sold the Cincinnati division in 1998 rather than 1991, and converted to stock ownership in August 1993 rather than January 2992. Therefore it was appropriate, and certainly not clear error, for the court to consider the improved markets for conversion and branch sales in order to compensate Citizens for the damage sustained.

D. Proof of Damages

1. Damages Related to the Sale of the Cincinnati Division

For calculating the damages associated with the forced sale of the Cincinnati Division, Fifth Third's expert, Dr. Brumbaugh, created a model that restored to Citizens the assets that had been transferred to Banc One in 1991 as well as additional assets to account for the loss of deposits caused by the breach, for a total of $400 million in assets

associated with the Cincinnati Division. Fifth Third IX, 71 Fed. CI at 77-78. Next he divided the damages calculation into two parts. The first was a calculation of lost operating profits on the restored Cincinnati assets for the period between 1992 and 1998. Based on Citizens' actual return on assets for that time period with certain adjustments, he calculated lost profits of approximately $10.5 million. Id. at 78-79. The second part of the damages calculation assumed that the Cincinnati division would have been sold in 1998 to Fifth Third when the other Citizens branches were sold. Conservatively using a 7% deposit premium, which was somewhat lower than the average deposit premium Citizens actually received in the 1998 sale, Dr. Brumbaugh calculated that the proceeds from selling the Cincinnati branches in 1998 would have been $11.1 million greater than the proceeds of the sale to Banc One in 1991. Id. at 79-80.

The trial court awarded Fifth Third damages for the lost profits Citizens would have made on the sale of the Cincinnati branches in 1998. The trial court found that, though lost profit claims are often not susceptible to proof due to their speculative nature, this claim for lost profits on the sale of the Cincinnati division was based on a specific investment opportunity—Citizens' 1998 sale of assets to Fifth Third. The court concluded that these damages had been proven to a reasonable certainty. Id. at 90-91.

In contrast, the trial court determined that Fifth Third's claim for lost operating profits for the Cincinnati division had not been established to a reasonable certainty. Fifth Third's model applied a hypothetical rate of return on assets to the restored Cincinnati asset base. The trial court found that this method was too speculative because there is no evidence that the thrift's expanded asset base,

including the Cincinnati assets, would have realized profits at a similar rate to the thrift's actual profits during that period. Id. at 91.

On appeal, the Government challenges the award based on the 1998 branch sale on the grounds that it was based on a hypothetical transaction, and thus is too speculative. There are two flaws in the Government's argument. First, although we have noted that damages claims based on hypothetical events often are difficult to prove, they are not barred as a matter of law. See Granite Mgmt. Corp. v. United States, 416 F.3d 1373, 1381-83 (Fed. Cir. 2005); Fifth Third VIII, 402 F.3d at 1236-37; Glendale, 378 F.3d at 1313. Second, the Cincinnati division award was not entirely hypothetical since it relied on two actual transactions—the 1991 sale of the Cincinnati branches to Banc One and the 1998 sale of the remaining branches to Fifth Third, albeit without the Cincinnati division. We see no clear

error in the trial court's finding that the award was established to a reasonable certainty, which the record fully supports.

In its cross-appeal, the Government challenges the award based on the 1998 branch sale on the grounds that it was based on a hypothetical transaction, and thus is too speculative. There are two flaws in the Government's argument. First, although we have noted that damages claims based on hypothetical events often are difficult to prove, they are not barred as a matter of law. See Granite Mgmt. Corp. V. United States, 416 F.3d at 1373, 1381-83 (Fed. Cir. 2005); Fifth Third VIII, 402 F.3d at 1236-37; Glendale, 378 F.3d at 1313. Second, the Cincinnati division award was not entirely hypothetical since it relied on two actual transactions—the 1991 sale of the Cincinnati branches to Banc One and the 1998 sale of the remaining branches to Fifth Third, albeit without the

Cincinnati division. We see no clear error in the trial court's finding that the award was established to a reasonable certainty, which the record fully supports.

In its cross-appeal, Fifth Third argues that the trial court erred in rejecting its claim for lost operating profits of the Cincinnati division between 1992 and 1998. It first asserts legal error, alleging that the trial court incorrectly applied the "reasonable certainty" standard to the amount of damages, rather than just to the fact that damages occurred. We agree with Fifth Third that some courts, including this one, have interpreted the "reasonable certainty" standard to apply only to the fact of damages, after which the court may "make a fair and reasonable approximation of the damages." Bluebonnet Sav. Bank, F.S.B. v. United States 266 F.3d 1348, 1356-57 (Fed. Cir. 2001) (quoting Locke v. United States, 283 F.2d 521, 524 (Ct. Cl. 1960)); see also 1 Robert L. Dunn, Recovery of Damages for Lost Profits Section 1.8 (6th ed. 2005) ("While the proof of

the fact of damages must be certain, proof of the amount may be an estimate uncertain or inexact."). Nevertheless, we do not understand the trial court's decision as having misapplied that standard when the court found that the claim for lost operating profits from 1992 to 1998 was not established. Rather, the opinion can be fairly read as finding it was not reasonably certain that the Cincinnati assets would have earned profits during the entire period in question.

Fifth Third also argues that the trial court made a factual error by assuming that Citizens invested its funds separately by division, as indicated by the court's reference to a "Dayton" rate of return, Fifth Third IX, 71 Fed. Cl at 78-79, 91, when in fact the thrift's assets were pooled for investment purposes. It appears, however, that for at least part of the 1992-1998 time period, Citizens consisted of only a Dayton division, so the rate of return on

pooled assets was indeed a Dayton rate of return for some of those years.[13] Thus it is not clear that the trial court made an erroneous assumption.

[13]Citizens sold its Columbus division in 1990 and its Cincinnati division in 1991, leaving only the Dayton division. Cross-Appellants Reply Br. 10. Citizens reentered the Cincinnati market by acquiring twelve branches from two banks in 1995.

Apendix E

FEDERAL TRADE COMMISSION
San Francisco Regional Office
Box 36005
450 Golden Gate Avenue
San Francisco, California 94102
Area Code (415) 556-1270

TO STATE AND LOCAL GOVERNMENTS

NOTICE OF INTENT TO RECOMMEND RULEMAKING AND INVITATION TO COMMENT

The San Francisco Regional office of the Federal Trade Commission intends to recommend that the Commission propose a trade regulation rule which may have a significant effect on existing state laws.

In making this recommendation, staff must inform the Commission of the potential effect of such a trade regulation rule on state and local law. We seek your assistance in ascertaining how this proposed rule may affect the laws of your state and how we may resolve or minimize potential conflicts between the rule and state law. This process is in keeping with the Commission's policy of seeking

involvement of representatives from state and local governments at the earliest possible state in our rulemaking efforts.

The trade regulation rule which the staff of this office intends to recommend to the Commission concerns the sale of complete dentures to consumers who are edentulous in one or both arches. Our initial examination of applicable state laws and regulations reveals that virtually all states prohibit non-dentists from selling complete dentures directly to consumers. Virtually all states further require that impressions be taken and dentures be fitted only by dentists and prohibit dentists from delegating these tasks to other persons acting under their supervision. Non-dentists may fabricate dentures only upon the written authorization of a dentist.

The current method of denture care delivery in the United States is apparently failing to meet the needs of our edentulous population. Approximately

40 percent of all edentulous Americans have ill-fitting or incomplete dentures. Twenty-five percent of all Americans over age 65 need to have a complete upper or lower denture (or both) constructed, either because they have no dentures at all or because the dentures they do have are so ill-fitting as to be beyond repair. The vast majority have not obtained any care within a five-year period. These persons suffer the physical and mental discomforts of sores, reduced ability to chew food, and poor appearance; risk a greater disability to wear dentures in the future; and forego the protection which might be provided by a screening for oral disease. There is no doubt that one of the major reasons for the failure to obtain denture care is the high cost of such care as it is now provided. Denture care prices are likely to be prohibitive, particularly for elderly and low-income persons who compromise the predominant portion of our edentulous population.

Non-dentists currently fabricate and evaluate the technical quality of complete dentures. The staff of this office believes that many non-dentists could also competently take impressions and fit dentures, and so could provide dentures of a quality equal to that required of dental licensees. We further believe that such persons are likely to provide denture care at prices substantially below the prices at which most such care is currently offered in this country. By substantially reducing prices to consumers, denture care would become accessible to a great number of consumers who cannot now afford it. As denture care becomes more accessible, the incidence of ill-fitting and incomplete dentures is likely to decline. **We have identified no risks in the denture care process or in the failure to obtain related dentist's care that would tend to outweigh this health benefit.** (Emphasis added.)

Accordingly, the rule contemplated by the staff

of this office would prevent the enforcement of current dental laws against non-dentists who provide, directly to consumers, complete dentures of a quality acceptable under prevailing standards of dental practice, provided that such persons advise consumers of the desirability of obtaining an examination for oral disease from a dentist and other pertinent information. It would further permit such persons to sell dentures to dentists and to purchase dentures for resale from dental laboratories.

In recommending such a trade regulation rule, we recognize the legitimate interests of the states in protecting their citizens from incompetence and deception. The rule which we will propose will not abrogate the states' power in that respect. The recommended rule will not, for example, prevent states from requiring that consumers obtain an oral examination from a dentist prior to obtaining dentures from a non-dentist. Nor will it prevent

states from requiring a demonstration of competence as a condition for providing denture care to the public. The recommended rule will, however, in effect, limit the subject matters about which the state may require competence to areas specifically related to complete denture care.

In addition to the above recommendation, the staff intends to recommend that the Commission propose a trade regulation rule which we do not believe is inconsistent with current state laws. This rule would require that dentists disclose to consumers the amount of any commercial dental laboratory charges included in the dentist's fee for any prosthetic dental services. Most consumers are unaware of the prices commercial laboratories charge for dental prosthetic appliances. In the absence of this information, consumers are unable to determine how much they are paying for the dentist's time and skill; they cannot make comparisons among dentists

or among the different quality appliances a dentist may offer. Disclosure would provide consumers with basic information necessary to make rational purchasing decisions. Consumers may further receive the economic benefits of healthy and unrestrained price competition.

We welcome written comments concerning the rulemaking proposals outlined above. However, to be certain that your response receives due consideration, please submit it no later than November 22, 1978. Address your response to:

Federal Trade Commission
San Francisco Regional Office
Attention: Ms. Ann Grover
450 Golden Gate Avenue, Box 36005
San Francisco,l California 94102

If you wish to discuss the proposed rule prior to submitting written comments, feel free to telephone Ms. Ann Grover of this office at (415) 556-1270.

Should the Commission decide to propose the rule we recommend, you will be given further

opportunity to comment. Indeed, the Commission encourages the participation of state and local governments in every phase of the rulemaking process. If the recommended rule is proposed by the Commission, you will have the opportunity, in formal rulemaking proceedings, to provide written comments, oral testimony, rebuttal submissions, post-hearing submissions and comments with respect to the final reports of the presiding officer and the Commission's staff. The Commission's staff will continue to keep representatives of state and local governments informed of the progress of the rulemaking proceedings and the opportunities for comment as they arise.

Appendix E-1

Appendix F

SECTION – 11

Appendices F - I

For Your
Information

From
John Beresford Welsh, Jr.,
Senior Counsel
Office of Program Research
House of Representatives

(206) 786-7133
Olympia, Washington 98504
MS: AS-33

See Comments – Mark-up
Reflects only technical
Legal problems with the
Draft, not on policy
Changes intended.

AN ACT Relating to denturitry; amending RCW 18.30.005, 18.30.010, 18.30.020, 18.30.030, 18.30.040, 18.30.050, 18.30.060, 18.30.080, 18.30.090, 18.30.110, 18.30.120, 18.30.130, 18.30.140, 18.30.150, 48.20.418, 48.21.148, 48.43.180, 48.44.500, and 48.46.570; reenacting and amending RCW 18.120.020 and 18.130.040; adding new sections to chapter 18.30 RCW; repealing RCW 18.30.100; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 18.30.005 and 1995 c 1 s 1 (Initiative Measure No 607) are each amended to read as follows:

The state of Washington finds that to realize

the state's current statutory policy of regulating health professions at the least restrictive level consistent with the public interest, (emphasis added) a program of (licensure omitted here) registration for denturists should be established. The intent of the legislature is to help assure the public's health, provide a mechanism for consumer protection, and offer cost-effective alternatives for denture care services and products to individual consumers and the state.

The legislature intends that prior registered (denturist added by J.B. Welsh) practitioners be registered as denturists under a grandfather clause to further the legislature's goal of increasing competition, reducing the cost of health care to the public, and providing optimum public access to denturist services. ("It is the intent of the legislature that persons practicing denturitry as registrants by the dept. of licensing, etc.; added by J.B. Welsh).

Sec. 2. RCW 18.30.010 and 1995 c 1 s 2 (Initiative Measure No. 607 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) ((Board omitted by J.B. Welsh) "Advisory Committee means the state advisory committed of denture technology

2. "Denture" means a patient removable full or partial upper or lower ((dental removed by J.B. Welsh)) denture appliance to be worn in the mouth to replace missing natural teeth.

3. "Denturist means a person ((licensed removed by J.B. Welsh) registered under this chapter to engage in the practice of ((denturism removed by J.B. Welsh)) denturitry.

4. "Department" means the department of health.

5. "Practice of ((denturism removed by J.B. Welsh)) denturitry means:

(a) Making, placing, constructing, altering, reproducing, or repairing a full or partial denture; and

(b) Taking impressions and furnishing or supplying a full or partial denture directly to a person or advising the use of a denture, and maintaining a facility for the same.

6."Secretary"means the secretary of health or the secretary's designee.

Sec. 3. RCW 18.30.020 and 1995 c 198 s 18 are each amended to read as follows:

(1) Before making and fitting a denture, a denturist shall examine the patient's oral cavity for the purpose of recognizing any readily apparent intra-oral abnormalities. A denturist may not attempt to diagnose any intra-oral conditions, treat any abnormalities of the oral cavity, prescribe

medication for abnormalities of the oral cavity, perform any surgical procedure on either hard or soft tissue, or perform any surgical procedure or tooth extraction on any tooth in the oral cavity. A denturist may not attempt to repair, replace, cement, re-cement, seat, or reseat any portion of a fixed bridge or crown, including but not limited to, any patient

(Following was penned by J.B. Welsh:
"Grandfather clause is not necessary under registration as any person may register without any qualifications regarding examination & education. Delete as not needed. all anyone needs to do is come in and sign up under registration. Goal is actually accomplished under registration.)

patient non-removable device such as a crown, bridge, pontic, true pontic, pin pontic, or steele's facing.

(a) If the examination gives the denturist

reasonable cause to believe that there is an abnormality or disease process that requires medical or dental treatment, the denturists shall ((immediately refer the patient to a dentist or physician. In such cases, the denturist shall take no further action to manufacture or place a denture until the patient has been examined by a dentist or physician and the dentist or physician gives written clearance that the denture will pose no threat to the patient's health – removed by J.B. Welsh)) Inform the patient of the advisability of seeking treatment from a physician or dentist before continuing with the procedures for constructing a new or replacemtn denture or partial denture. If the patient refuses the denturit's advice to consult with a physician or dentist, new or replacement dentures may be constructed by the denturist only after first receiving the patient's written acknowledgment of suspect conditions within the oral cavity and the patient's refusal to seek additional consultation from a

physician or dentist concerning the condition. When a denturist refers a patient to a physician or dentist, (it is the responsibility of the physician or dentist – omitted by J.B. Welsh) shall refer the patient to the denturist after completion of the consultation, treatment, or tissue or tooth modification.

(b) If the examination reveals the need for tissue or teeth modification in order to assure proper fit of a full or partial denture, the denturist shall refer the patient to a dentist and assure that the modification has been completed before taking an impression for the completion of the denture.

(2) A denturist who makes or places a denture in a manner not consistent with this section is subject to the sanctions provided in chapter 18.130 RCW, the uniform disciplinary act.

((3) A denturist must successfully complete special training in oral pathology prescribed by the secretary, whether as part of an approved associate

degree program or equivalent training, and pass an examination prescribed by the secretary, which may be a part of the examination for licensure to become a licensed denturist. – Removed by J.B. Welsh))

Sec. 4. RCW 18.30.030 and 1995 c 1 s 4 (Initiative Measure No. 607) are each amended to read as follows:

No person may represent himself or herself as a ((licensed – removed by J.B. Welsh)) registered denturist or use any title or description of services without applying for ((licensure – removed by J.B. Welsh)) registration, meeting the required qualification, and being ((licensed – removed by J.B. Welsh)) registered as a denturist by the department, unless otherwise exempted by this chapter.

Sec. 5. RCW 18.30.040 and 1995 c 1 s 5 (Initiative Measure No. 607) are each amended to read as follows:

Nothing in this chapter prohibits or restricts:

(1) The practice of a profession by an individual who is licensed, certified, or registered under other laws of this state and who is performing services within the authorized scope of practice;

(2) The practice of ((denturism – removed by J.B. Welsh)) denturitry by an individual employed by the government of the United States while the individual is engaged in the performance of duties prescribed by the laws and regulations of the United States;

(3) The practice of ((denturism – removed by J.B. Welsh)) denturitry by students enrolled in a school approved by the department (in consultation with the advisory committee – added by J.B. Welsh) ((and advisory committee – deleted by J.B. Welsh)). The performance of services must be pursuant to a course of instruction or an assignment from an instructor and under the supervision of an instructor;

(4) Work performed by dental labs and dental technicians under the written prescription of a dentist:

(5) Work performed by dental laboratories and dental technicians under the written prescription of a registered denturist; or ((deleted by J.B. Welsh)).

(6) Work performed by a denturist registered with the department of licensing prior to December 8, 1994. (Not necessary: Under registration there are no qualifications; anyone can sign up (register at any time. – Noted by J.B. Welsh)

Sec. 6. RCW 18.30.050 and 1995 c 1 s 6 (Initiative Measure No. 607) are each amended to read as follows:

(1) The state ((board – deleted by J.B. Welsh)) advisory committed of denture technology is created. The ((board – deleted by J.B. Welsh)) advisory committee shall consist of (seven) changed to six by J.B. Welsh members appointed by the secretary as

follows:

(a) Four members of the ((board – deleted by J.B. Welsh)) registered under this chapter, except initial appointees, who must have ((five – deleted by J.B. Welsh)) three years' experience in the field of ((denturism or a related field – deleted by J.B. Welsh)) denturitry.

(b) Two members shall be selected from persons who are not and have never been affiliated with any health care profession ((or – deleted by J.B. Welsh)) facility, government agency, or entity, at least one of whom must be over sixty-five years of age representing the elderly.

((c) One member must be a dentist licensed in the state of Washington – deleted by Keith Allison))

(2) The members of the ((board – deleted by J.B. Welsh)) advisory committed shall serve for terms of three years. The terms of the initial members shall be staggered, with the members

appointed under subsection 91)(a) of subsection (1) (a) of this section serving two-year and three-year terms initially and the members appointed under subsection (1) (b) ((and (c) – deleted by J.B. Welsh)) of this section serving one-year, two-year and three-year terms initially. Vacancies shall be filled in the same manner as the original appointments are made. Appointments to fill vacancies shall be for the remainder of the unexpired term of the vacant position.

(3) No appointee may serve more than two consecutive terms.

(4) Members of the ((board – deleted by J. B. Welsh)) advisory committee shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(5) A member of the ((board – deleted by J.B. Welsh) advisory committee may be removed for just cause by the secretary.

Sec. 7. RCW 18.30.060 and 1995 c 1 s 7

(Initiative Measure No. 607) are each amended to read as follows:

(1) The ((board – deleted)) advisory committee shall elect a chairperson of the ((board – deleted)) advisory committee annually. The same person may not hold the office of chairperson for more than ((three – omitted)) two years in succession.

(2) A majority of the ((board – deleted)) advisory committee constitutes a quorum for all purposes, and a majority vote of the members voting governs the decision of the ((board – omitted) advisory committee.

NEW SECTION. Sec. 8. A new section is added to chapter 18.30 RCW to read as follows:

The advisory committee shall:

(1) Determine the qualifications of persons applying for registration under this chapter;

(2) Adopt rules under chapter 34.05 RCW to carry out the provisions of this chapter;

(3) Set all registration and renewal fees in accordance with RCW 43.70.250. Registration fees may not be set at a rate to exceed two hundred dollars;

(4) Advise the secretary on the hiring of clerical, administrative, investigative, and other staff as needed to implement this chapter and act on behalf of the advisory committee; and

(5) Act as the disciplining authority under this chapter in accordance with the uniform disciplinary act, chapter 18.130 RCW, which governs unlicensed practice, the issuance and denial of registrations, and the disciplining of registration holders under this chapter.

Sec. 9. RCW 18.30.080 and 1995 c 198 s 19 are each amended to read as follows:

The secretary shall:

(1) In consultation with the advisory committee, determine the qualifications of persons

applying for registration under this chapter;

(2) In consultation with the advisory committed prescribe, administer, and determine the requirements for examinations under this chapter and establish a passing grade for licensure under this chapter;

(3) In consultation with the advisory committee, adopt rules under chapter 34.05 RCW to carry out the provisions of this chapter;

(4) In consultation with the advisory committee, set all registration, ((examination – deleted by J.B. Welsh) and renewal fees in accordance with RCW 43.70.250;

(5) Evaluate and designate those schools from which graduation will be accepted as proof of an applicant's completion of course work requirements for licensure (should have been registration);

(6) Act as the disciplining authority under this chapter in accordance with the Uniform Disciplinary

Act, chapter 18.130 RCW, which governs unregistered practice, the issuance and denial of registrations, and the disciplining of registrants holders under this chapter;

(7) Issue registrations for the practice of denturitry under this chapter.

(8) (2) Administer oaths and subpoena witnesses for the purpose of carrying out the activities authorized under this chapter.

(9) (3) Establish forms and procedures necessary to administer this chapter.;

(10)(4) Hire clerical, administrative, investigative, and other staff as needed to implement this chapter and act on behalf of the advisory committee and the secretary; and

(11)(5) Issue registrations of endorsement for applicants from states that maintain standards of practice substantially equivalent to this state.

(Following penned by J.B. Welsh – "This is uniform

language for all the regulated health professions; change not necessary anyway under registration because all they need to do is come in and sign up.)

Sec. 10. RCW 18.30.090 and 1995 c 198 s 20 are each amended to read as follows:

The secretary shall issue a registration to practice denturitry to an applicant who submits a completed application, pays the appropriate fees, and meets the following requirements:

(1) A person currently licensed to practice denturitry under statutory provisions of another state with substantially equivalent licensing standards to this chapter shall be registered without examination upon providing the department with:

(a) (Deleted by J.B. Welsh) proof of successfully passing a written and clinical examination for denturism in a state that the secretary has determined has substantially equivalent standards as those in this chapter in both

the written and clinical examinations; and

(b) an affidavit from the state agency where the person is licensed, certified, or registered attesting to the fact of the person's licensure, certification or registration.

(2)Persons registered as denturists with the department of licensing between August 1983 and December 8, 1994, shall be registered without delay. (Penned by J.B. Welsh – Not necessary, anyone could sign up anyway. Don't need a grandfather clause under registration because there are no qualifications under registration.)

(3) A person graduating from a formal denturitry program shall be registered if he or she:

(a) documents successful completion of formal training with a major course of study in denturitry of not less than two years in duration ((at an education institution recognized by the secretary; and deleted by J.B. Welsh))

(b) Passes a written and clinical examination approved by the secretary – deleted by J.B. Welsh))

(3) (4) An applicant who does not otherwise qualify under subsection (1), (20) or (3) of this section shall be registered within two years of December 8, 1994, if he or she:

(a) Provides to the secretary three affidavits by persons ((other than family members – deleted by J. B. Welsh)) attesting to the applicant's employment in denture technology for at least three years, or provides documentation of at least two thousand four hundred hours of practical work within denture technology; and

(b) Provides documentation of successful completion of a training course ((approved by the secretary or completion of an equivalent course approved by the secretary; and

(c) Passes a written and clinical examination administered by the secretary – deleted by J.B.

Welsh))

Sec. 11. RCW 18.30.110 and 1995 c 198 s 22 are each amended to read as follows:

The department shall charge and collect the fees established by the advisory committee. Fees collected shall be placed in the health professions account under RCW 43.70.320 ((Sec. 11 deleted in entirety by J.B. Welsh))

Sec 12. RCW 18.30.120 and 1995 c 1 s 13 (Initiative measure No. 607) are each amended to read as follows:

(1) A registration issued under RCW 18.30.080 is valid for three years. A registration may be renewed by paying the renewal fee.

(2) If a registration issued is effective on a date other than July 1, it shall be valid until the following June 30.

(3) The registration shall contain, on its face, the address or addresses where the registration

holder will perform the denturist services.

Sec. 13. RCW 18.30.130 and 1995 c 198 s 23 are each amended to read as follows:

The secretary/advisory committee shall establish by rule the administrative requirements for renewal of registrations to practice denturitry, but shallnot increase the registration requirements provided in this chapter. The secretary/advisory committee shall establish a renewal and late renewal penalty in accordance with RCW 43.70.250. Failure to renew shall invalidate the registration and all privileges granted by the registration. The secretary/advisory committee shall determine by rule whether a registration shall be canceled for failure to renew and shall establish procedures and prerequisites for reregistration.

Sec. 14. RCW 18.30.140 and 1995 c 198 s 24 are each amended to read as follows:

(1) An individual may place his or her

registration on inactive status. The holder of an inactive registration shall not practice denturitry in this state without first activating the registration.

(2) The inactive renewal fee shall be stablished by the secretary/advisory committee, but may not exceed two hundred dollars ((Penned by J.B. Welsh – violates state policy: Costs must be funded by fees – not necessary)) Failure to renew an inactive registration shall result in cancellation in the same manner as failure to renew an active registration results in cancellation.

(3) An inactive registration may be placed in an active status upon compliance with rules established by the secretary/advisory committee.

4. The provisions relating to denial, suspension, and revocation of a registration are applicable to an active registration, except that when proceedings to suspend or revoke an inactive registration have been initiated, the registration

registration have been initiated, the registration shall remain inactive until the proceedings have been completed.

Sec. 15. RCW 18.30.150 and 1995 c 1 s 16 (Initiative Measure No. 607) are each amended to read as follows:

Not withstanding any other provision of state law, a registered denturist may enter into a partnership or other business association with a dentist, dental hygienist, or any other health care professional, provided that such association does not impede the independent professional judgment of either party.

Sec. 16. RCW 18.120 and 1995 c 323 s 15 and 1995 c 1 s 18 (Initiative Measure No. 607) are each reenacted and amended to read as follows:

The definitions contained in this section shall apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant Group" includes any health professional group or organization, any individual, or any other interested party which proposes that any health professional group not presently regulated be regulated or which proposes to substantially increase the scope of practice of the profession.

(2) "Certificate" and "certification" mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who (a) has met certain prerequisite qualifications specified by that regulatory entity, and (b) may assume or use "certified" in the title or designation to perform prescribed health professional tasks.

(3) "Grandfather clause" means a provision in a regulatory statute applicable to practitioners actively engaged in the regulated health profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory

statute to perform prescribed occupational tasks.

(4) "Health professions" means and includes the following health and health-related licensed or regulated professions and occupations: Podiatric medicine and surgery under chapter 18.22 RCW; chiropractic under chapter 18.25 RCW; dental hygiene under chapter 18.29 RCW; dentistry under chapter 18.32 RCW; denturitry under chapter 18.30 RCW; dispensing opticians under chapter 18.34 RCW; hearing aids under chapter 18.35 RCW; naturopaths under chapter 18.36A RCW; embalming and funeral directing under chapter 18.39 RCW; midwifery under chapter 18.50; nursing home administration under chapter 18.52 RCW; optometry under chapters 18.53 and 18.54 RCW; ocularists under chapter 18.55 RCW; osteopathy and osteopathic medicine and surgery under chapters 18.57 and 18.57A RCW; pharmacy under chapters 18.64 and 18.64A RCW; medicine under chapters

18.71 and 18.71A RCW; emergency medicine under chapter 18.73 RCW; physical therapy under chapter 18.74 RCW; practical nurses under chapter 18.79 RCW; psychologists under chapter 18.83 RCW; registered nurses under chapter 18.79 RCW; occupational therapists licensed under chapter 18.59; respiratory care practitioners certified under chapter 18.89 RCW; veterinarians and animal technicians under chapter 18.92 RCW; health care assistants under chapter 18.135 RCW; massage practitioners under chapter 18.108 RCW; acupuncturists licensed under chapter 18.06 RCW; persons registered or certified under chapter 18.19 RCW; dietitians and nutritionists certified by chapter 18.138 RCW; radiologic technicians under chapter 18.84 RCW; and nursing assistants registered or certified under chapter 18.88A RCW.

(5) "Inspection" means the periodic examination of practitioners by a state agency in

order to ascertain whether the practitioners' occupation is being carried out in a fashion consistent with the public health, safety, and welfare. However, to assure no disruption of office routine, a denturist must receive notification of a pending inspection from the inspecting agency thirty days before the inspection. The notification from the inspecting agency must give the precise time and date of the proposed office or facilities inspection. ((J.B. Welsh demanded the underlined portion above be deleted from the proposed legislation to return the regulation of denturists to registration where RCW's 18.120 and 18.122 required it to be. Mr. Welsh state "Delete here, but move new language to section 9. This section is not part of the denturist practice act but is generic to all health professions. By his statement, Mr. Welsh verified the claims of denturists who had been registered with the dept. of licensing.))

(6) "Legislative committees of reference" means the standing legislative committees designated by the respective rules committees of the senate and house of representatives to consider proposed legislation to regulate health professions not previously regulated.

(7) "License," "licensing," and "licensure" mean permission to engage in a health profession which would otherwise be unlawful in the state in the absence of the permission. A license is granted to those individuals who meet prerequisite qualifications to perform prescribed health professional tasks and for the use of a particular title.

(8) "Professional license" means an individual, nontransferable authorization to carry on a health activity based on qualifications which include: (a) Graduation from an accredited or approved program, and (b) acceptable performance on a qualifying

examination or series of examinations.

(9) "Practitioner" means an individual who (a) has achieved knowledge and skill by practice, and (b) is actively engaged in a specified health profession.

(10) "Public member" means an individual who is not, and never was, a member of the health profession being regulated or the spouse of a member, or an individual who does not have and never has had a material financial interest in either the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.

(11) "Registration" means the formal notification which, prior to rendering services, a practitioner shall submit to a state agency setting forth the name and address of the practitioner; the location, nature and operation of the health activity to be practiced; and, if required by the regulatory entity, a description of the service to be provided.

(12) "Regulatory entity" means any board, commission, agency, division, committee, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

(13) "State agency" includes every state office, department, board, committee, commission, regulatory entity, and agency of the state, and, where provided by law, programs and activities involving less than the full responsibility of a state agency.

Sec. 17. RCW 18.130.040 and 1995 c 336 s 2, 1995 c 323 s 16, 1995 c 260 s 11, and 1995 c 1 s 19 (Initiative Measure No. 607) are each reenacted to amend to read as follows: ((RCW 18.130 is not part of the denturist act, but is the uniform disciplinary act regulating all professions – J.B. Welsh)) RCW 18.130 is also part of the same Health Professions Regulation Act as RCW 18.120 and 18.122 – Allison

(1) This chapter applies only to the secretary and the boards or committees and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession licensed, certified or registered under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified under chapter 18.89 RCW;

(ix) Respiratory care practitioners certified under chapter 18.89 RCW;

(x) Persons registered or certified under chapter 18.19 RCW;

(xi) Persons registered as nursing pool operators under chapter 18.52 RCW;

(xii) Nursing assistants registered or certified under chapter 18.79 RCW;

(xiii) health care assistants certified under chapter 18.135 RCW;

(xiv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xv) Sex offender treatment providers certified

under chapter 18.155 RCW;

(xvi) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xvii) Persons registered as adult family home operators under RCW 18.48.020; and

(xviii) Denturists registered under chapter 18.30 RCW;

(b) The boards and commissions have authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) the chiropractic quality assurance commission as established in chapter 18.25 RCW

(iii) The dental quality assurance commission as established in chapter 18.32 RCW;

(iv) the board on fitting and dispensing of hearing aids as established in chapter 18.35 RCW;

(v) the board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.52 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapte

18.83 RCW; and

(xiv) The veterinary Board of governors as established in chapter 18.92 RCW.

(2) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in....

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APPENDIX G

WASHINGTON DENTURIST ASSOCIATION

Report
Washington Denturist Association
Membership Meeting
Saturday, January 15, 1994

President's Report

WDA president Don Jensen reported on outreach activities for the Initiative Campaign.

Ron McNail of the Washington-Idaho District Council of Labor has helped WDA gain access to numerous unions. Val Charron, WDA State Coordinator, gave a presentation to a District Council meeting and received a very positive response. Val and Don also had the opportunity to meet with John Demonovich, President of the Retired Public Employees Council of Washington, currently a member of the Citizens for Affordable Denture Care.

Val obtained a list of senior centers in King and Pierce Counties, both keys areas to obtain signatures. He plans to call senior center

coordinators and seek their assistance in gathering signatures.

INITIATIVE CAMPAIGN TREASURER

Don and Val announced that Dorothy Jensen, WDA Treasurer, will serve as the Treasurer for the Initiative Campaign. She will be required to keep very careful records. We need to keep receipts and tabs on all money spent.

TRIBAL DENTURIST EXAMINATION

Bruce Anderson, President of the Tribal Denturist Association, has agreed to come to Washington state and provide Washington denturists with the Federal Tribal Denturist Examination. The exam will be given at the Hansen's NW Denture Center in Deming and cost $300. It was decided that only WDA member denturists and their associates will be allowed to take the tribal examination. **Denturists with the Tribal Denturist License will have a definite**

advantage when the Initiative passes.

(Emphasis added.)

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WDA BULLETIN BOARD

Our next meeting will be Saturday, August 13th, at Gary Fox's house. This will be a combination member meeting & our first study group. We will begin our meting at 11:00 am – 12:00, break for lunch, our study group will begin at 1:15 -??? Lunch will be provided. For our members on the West side of the mtns, directions to Gary's house are as follows: Take I-90 (forever) take liberty Lake exit, at the end of exit turn left, go across freeway & river, turn right on Euclid, then turn left on Molter, go past dead end sign, Gary's house is on the right; 4308 Molter (Gray Rancher style). Please don't be late!!

RSVP Dorothy by August 10th

The news you have all been waiting for.....your test is scheduled for September 16, 17, 18. These dates are firm, we cannot change them.

By now you should all have your study materials from Bruce, if you do not, you best get it.

As you have noticed there are close to 200 questions. Don & Val were planning to answer these and have them ready for you, but with the overwhelming obligations that have come up with getting on the ballot, Val and Don have not been able to get this accomplished. Therefore they have decided the easiest way to get these questions answered is to spread them out among everyone. They are asking everyone to answer their fair share & to be ready to share their answers with the rest of the study group at Gary's. The material you have gives you a list of books you can find your answers in. Enclosed you will find a list of everyone preparing for this test & their assigned questions. It is imperative you complete your questions & have them ready by our next meeting!!!!!!

Val has enclosed several articles he would like to share:

Chet Charron, WDA Fundraising Chair, felt

that there was still strong potential for financial support outside Washington denturists. He mentioned that labor was sympathetic. He has been in contact with the AFL-CIO, as well as the Teamster's lobbyist. Aside from potential donations, they will also be able to provide strong assistance on the gathering of signatures among the labor ranks.

Chet again broached the option of WDA members making loans to the Association to help fund the Initiative Campaign. He said that his bank has already shown interest in giving a loan through him and other denturists.

Jim Davis discussed the strong effort that will be made to solicit funds from denturists nationwide. He will be sending a letter from the national Denturists Association requesting donations to the NDA Mailing list. Val also plans to send a letter from WDA to the same list requesting financial assistance. Motion: Agreed that WDA members would each

contribute $10,000.00 to the signature gathering aspect of the Initiative Campaign, with $5,000 contributed by February 1 and $5,000 by April 1. PASSED.

There was a brief discussion on the agreement with WIN for their coordination of the paid signature-gathering effort. All indications are that Sherie Bockwinkle and WIN have a good reputation and are recognized statewide because of their work – and subsequent media exposure – on other initiative efforts.

Motion: To sign a contract with WIN with the agreed-upon per signature rate covering all expenses with the exception of a $250 maximum for gas and travel expenses. PASSED.

Next Meeting: Sunday, January 15, 1993, 12:30 pm – 3:30 pm, 13 Coins Restaurant, 18000 Pacific Hwy., S., Sea-Tac, Washington 98188 (across from the airport), 206-243-9500

APPENDIX G-3

INITIATIVE 607 – CHAPTER 18.30 RCW

Relating to DENTURISTS

INVESTIGATIVE SUMMARY AND LEGISLATIVE RECOMMENDATIONS

MARCH 21, 1995

INTRODUCTION:

The official ballot title for Initiative 607 reads:

"Shall persons other than dentists be license to make and sell dentures to the public, as regulated by a new state board of denture technology?

The statement in support of the initiative stated that I-607 does not include a "grandfather clause" and it calls for individuals who wish to become licensed Washington denturists to pass a written and practical board certified exam..."

ISSUE: Several members of the legislature and State Board of Denture Technology received a letter of complaint containing allegation of problems

relating to the new denturist law and to actions by individual members of the State Board of Denture Technology and of the Washington Denturist Association.

ACTION: The Department of Health conducted an investigation which focused primarily in two areas: 1) the Indian Tribal Denturitry Examination and 2) Nooksack Tribal Licenses.

FINDINGS: 1) Indian Tribal Denturitry Association (ITDA): The ITDA was established in 1985 by a group of individuals who were interested in developing an examination which would serve as a competency exam for denturists and could in turn be utilized by Indian tribes as a credentialing assurance when issuing licenses. The ITDA is an independent association with approximately 100 individuals who become members after successfully completing the exam. The president is elected by the members and assumes principle responsibility for administering

the examination during his/her three year term. Issues relating to initial test development, test item validity, and chain of test security have not been clarified. Several Washington residents, who intend to seek licensure, have been active participants in the IDTA association and its board.

In September of 1994, the Washington Denturist Association (WDA) arranged for the ITDA exam to be administered to its members who had not yet taken it. The association (versus individual applicants) was provided with 200 study questions from the ITDA. The association relayed questions to its members and coordinated study sessions. The examination was announced only to association members.

Although several allegations with regard to the examination have been made, there is no direct evidence to support any impropriety relating to the examination or its administration. However, there remain serious questions as to the appearance of

impropriety and to past examination security.

2) Nooksack Tribal License: The Nooksack Indian Tribe has been issuing licenses to denturists since 1986. For several, if not all of the years since, the tribe has had a contract with one individual to provide all denturist services on its lands. That same individual, although not a tribal member, has acted as the tribe's "licensing director."

According to the Chairman of the Nooksack Tribal Council, he simply signed license certificates provided to him by the licensing director and collected the tribe's fee for this action. The license was based upon successful completion of the ITDA exam. The Chairman indicated he had never seen an application, license renewal or roster of licensees. It appears that the tribe did not follow its own very detailed licensing act when issuing initial licenses and that it has not maintained a viable ongoing licensing program (i.e., license renewal,

continuing education, complaint investigation). It appears that the issuance of tribal licenses was not to provide for the practice of additional denturists on the reservation since it had a contract with one individual.

CONCLUSIONS:

1. There is an inherent conflict in the law which establishes a board consisting of a majority of members who wish to become licensed under the new law and who must grant licenses to themselves. To become licensed, board members must either a) be tested via an examination developed and administered by the board, or b) be licensed via a substantially equivalent licensing examination as determined by the board.

In addition to the examination conflict, board members must determine whether an individual's past history of unprofessional conduct is basis for license denial (including their own); and set

minimum educational coursework and determine whether their own coursework meets the criteria.

2. There is a unique provision within the law which grants licensure to a select group of individuals who were behind the initiative and who hold tribal licenses which appear suspect. The law provides that anyone licensed by another state "or federal enclave" with "substantially equivalent examination standards" can become licensed.

First, although there was intent that "federal enclave" referenced tribal licenses, legal review indicates that the terminology is not applicable to Indian tribes, which are sovereign nations. There are no provisions for licensure by "federal enclave" in other health profession's licensing laws.

Second, for whatever the actual reason, it appears that the tribal license issued by the Nooksacks was issued solely for the purpose of evading a state administered licensing examination.

This, combined with the appearance of issues relating to the ITDA exam itself, causes serious conflict of interest concerns.

Finally, the common language utilized in licensing statutes references "substantially equivalent licensing standards, not examination standards. Such language would ensure applicants not only meet exam equivalency, but education and other requirements.

RECOMMENDATIONS:

1. Amend Chapter 18.30 RCW to provide the Secretary of the Department of Health the power/duty to: a) develop and adopt rules governing the initial (two years) eligibility criteria, endorsement of other states, and set standards for examination, and b) develop and administer the initial examination.

2. Modify RCW 18.30.090(1) by deleting reference to "federal enclave" and changing

"substantially equivalent examination and practice standards" to "substantially equivalent licensing standards."

This action would remove any appearance of impropriety or conflict of interest on the part of the Washington State Denturist Association, specifically those members on the State Board of Denture Technology. Additionally, this would close a perceived "backdoor" method of circumventing the state licensing process.

Both of the above changes would preserve the people's request for a denture licensing program while ensuring applicants for licensing are all equally treated and minimally qualified.

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Appendix G-4

THE WDA NEWS

Newsletter of the Washington Denturist Association

January 1992

In 1987, the Dental Prosthesis Identification Act was added to RCW 18.32. This provided for the permanent identification of all new prostheses or existing prostheses which were rebased. Unfortunately, the "Names in Dentures Law" did not provide for persons in extended care facilities with already existing dentures. This group requires the most protection because their condition necessitates assistance when cleaning or repairing dentures.

Considering this, it was decided at the November board meeting to facilitate this Act by adding names in dentures on a no-charge basis for all residents of extended care facilities in the state of Washington. For specific information concerning technique guidelines and coordination with local facilities, contact Eric Hansen, President.

MEMBERSHIP INFORMATION AND NEWSLETTER SUBSCRIPTION

In response to a deluge of phone calls received concerning membership, the WDA has voted and approved a policy which allows non-denturists to receive our quarterly newsletter. An application is provided on the back page. Hopefully many of you who are sympathetic to the denturist profession or who are now practicing or who would like to train to become a denturist, will follow up with other supportive activities:

- Letters and phone calls to your legislators.
- Gather signatures to petition your legislator.
- Arrange to host a speaker for your group.
- Make a donation to defray costs of getting the word to our state legislators.

Membership in the professional association currently requires validation of educational background and proof of active participation in the

practice of denturitry.

BEND WORKSHOP

Much effort by Oregon Denturists and clinicians Dr. Jim Davis and Ivan Collver made the November 9 workshop in Bend both an enjoyable and educational experience for everyone.

Dr. Jim Davis, Ed.D described the psychology of aging. The elderly population is the largest age group that a denturist treats and understanding the psychology of this group is vital to the best care we can give. Dr. Davis covered such topics affecting the elderly as changes in role and status, financial difficulties, new leisure lifestyle, changes in relationships, experiencing loneliness and isolation and changes in health and physical appearance.

Dr. Davis has been one of the principal advocates for seniors, organizing successful campaigns for many issues. He was an administrator and faculty member at the University

of Maryland, College Park before moving to Oregon and has earned many prestigious distinctions since then, most of which result from his dedication to human service. I'm sure everyone present had a deeper understanding and compassion for the challenges facing seniors after listening to Jim.

Ivan Collver walked us through the selection and start up of hardware and software needed to computerize a denturist office. A helpful part of the clinic were the units available to demonstrate some of the software.

Everyone went home with a very useful book ooutlining different products and procedures discussed, which, according to Ivan will "help you get past the C:> prompt hopefully without the loss of any hair." Anyone needing professional consultation about computers or software can contact Ivan at 505-882-4601.

The WDA would like to see this educational

exchange continued and is planning a Washington workshop for early next year. We hope it will interest many out of state denturists in addition to our own membership.

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WDA Newsletter January 1992

Kip Monaghan, Editor

The Washington Denturist Association Newsletter is published quarterly by the Washington Denturist Association, 800 Fifth Avenue Suite 235, Seattle, Washington 98104. correspondence, articles for publication and advertising should be mailed to the above address. All rights reserved except where expressly waived.

Official WDA positions are expressed only in statements bylined by WDA officers. All other expressions or opinions are regarded as reflecting the views of the author of the article or letter.

The WDA Newsletter is published for the benefit of its members and the members of the WDA Action Committee. Membership dues for the WDA Action Committee are $25.00 annually.

WASHINGTON DENTURIST ASSOCIATION

Eric Hansen	President
Gary Fox	Vice President/Treasurer
Eldred Olson	Secretary
Mike Gillispie	Immediate Past President

LETTERS

Anyone wishing to submit letters for publication may address them to:

Editor, WDA News

Washington Denturist Association

800 5th Avenue, suite 235

Seattle, Washington 98104

R.C.W. 18.120 THE SUNRISE LAW FOR NEW HEALTH PROFESSIONS

In 1983, the Washingto Legislature passed RCW 18.120, a ruling called the "Washington Regulation of Health Profession Act" (Know as the Sunrise law for new health professions). All individuals should be permitted to enter into a health profession unless there is an overwhelming

need for the state to protect the interest of the public by restricting entry into the profession. According to the legislature, a health profession should be regulated by the state only when:

"The unregulated practice can clearly harm or endanger the health, safety or welfare of the public and the potential for harm is easily recognizable and not remote or dependent upon tenuous argument."

The legislature does not create new professions, they only regulate when it is determined that the profession is a harm in the state of Washington.

To open a denturist practice in Washington, registration must be made with the state. RCW 18.120 describes registration as "the formal notification which, prior to rendering services, a practitioners shall submit to a State Agency setting forth the name and address of the practitioner; the location, nature and operation of the health activity

to be practiced."

In addition to the passage of 18.120, denturists were scrutinized by the State Health Coordinating Council from 1985 to 1987. The council stated: "We found no evidence that anyone has ever been harmed by a denturist." After considerable study, this committee voted unanimously to approve the denturist bill. The committee itself joined in efforts to tailor the bill to its present form.

Considering these actions by the State, the Washington Denturists should be freed from harassment if it is the case that they cause no harm (Ruling 18.120). If there is a risk of harm, the State is compelled to regulate (passage of the Denturist Bill already approved by the State Health Coordinating Council).

Gary Fox

Vice President, Treasurer

With thanks to Rick Miller for clarification of the

Sunrise law.

OREGON DENTURISTS NOW ORGANIZED UNDER A STATE BOARD

Effective September 29, 1991, House Bill 3423 provides for the establishment of a State Board of Denture Technology replacing the State Advisory Council on Denture Technology. This important legislation will enable Oregon denturists to act as a policy making board enacting binding decisions on such issues as license fees, certification, registration and denturist investigation processes. Zit will also clarify language in the denturist statutes and revises the disciplinary and certification renewal process.

Congratulations to the Oregon Denturist Association and the senior advocate groups who worked hard for the passage of this bill.

STATE OFFICIALS MAY BE SUED: PROTECTION FOR DENTURISTS RIGHT TO PRACTICE

The high court says state officials may be

sued. The Dental Board and others are subject to being sued if they conspire against the rights of denturists in the practice of their profession. They can be fined as much as $10,000 and ten years in prison and, if death is the result, life imprisonment.

In October of 91, the high court, in a 8-0 decision, assures that injured citizens may seek injury compensation from State Officials if a conspiracy is proven. This is the case even though citizens are legally barred from suing governments that employ them.

The Supreme Court said a "conspiracy against the rights of citizens is: if two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any rights or privilege secured to him by the Constitution or law of the United States or because of his having exercised the same."

This ruling could very well open another

avenue for health care reform and will be interesting to follow in the future to see what impact this has for the profession of denturitry.

*Legislative Report: a list of the Washington State legislative "ALL STAR TEAM." Will your legislator be there?

* Do you know how to insure your constitutional right to provide health care? Members of the Washington Denturist Association have recently begun to insure their right to provide alternative health care and their patients' right to receive care from the provider of their choice. We want all members to utilize this right as an American citizen and to practice their professions as declared by our country's founders. Remember, you must take advantage of this right. it is not automatic.

*Year end report from the National Denturist Association.

Appendix G-4

APPENDIX G-5

VOTE YES

I-607

*Lower the Cost of Denture Care

*Gain Freedom of Choice

*Provide Greater Access for Dentures

*Remove a Monopoly in Washington

*Raise the Quality of Denture Services

Initiative 607 licenses dental professionals called "Denturists" to make dentures directly for their patients. Denturists are currently licensed in Oregon, Montana, Idaho and Canada. They provide dentures at an average of half the cost.

Denturists have been recognized around the world for decades. This qualified individual must pass a board certified written and practical exam to be licensed in Washington. Denturists provide the FREEDOM OF CHOICE to the people of Washington for their denture care.

SEE ENDORSERS OF I-607 ON BACK

Paid for by Citizens for Affordable Denture Care –

Dorothy Jensen, Treasurer

Appendix G-5

APPENDIX G-5

WDA News

Legal Issues

Our legal representative, Henry Lippek recently sent out letters to the Chief recently sent out letters to the Chief Executive Offices for Washington Dental Service and Regence BlueShield. The letter that was sent stated the following:

RE: Services performed by denturists

Dear Sirs:

We represent the Washington Denturist Association. We have concerns about Washington Dental Service and Regence BlueShield payment to denturists for services performed within the lawful scope of their denturist's license.

It appears that Washington Dental Service and Regence BlueShield treats denturists differently than dentists in two main ways. First, patients are reimbursed for denture services performed by denturists while if such services are performed by

preferred dentists, payment is made directly to the dentist. Second, it appears that there are different reimbursement amounts or percentage of co-payments by patients depending upon whether they are treated by a dentist or a denturist.

We believe disparate handling of dentists and denturists with respect to reimbursement, co-payment or other terms of coverage are unlawful under RCW 48.43.180, RCW 48.44.500, RCW 48.46.570 and other applicable law.

We are interested in opening a dialogue with you to resolve these issues to that patients receive the full benefit of their Washington Dental Service or Regence BlueShield coverage.

Very truly your, Henry E. Lippik

IMPLANT TIPS

Submitted by Eric Hansen, L.D.

If you have had any patients with existing Hader bars and you are making a new denture over

that with the Hader bar clips, make sure that the old dentures has all the clips in it. If it doesn't, ask the patient for the history and if you find that the dentist that made it could no get all of the clips in, or if the clips wear out quickly, then the bar is not parallel and if you make a new denture and try to get the clips in it, you will have the same problem.

I have found that processing the new denture with LuciSoft secures it around the bar and the patient will be 100% satisfied.

NEW DENTURISTS!!!

If you know of anyone that is licensed or will be getting licensed and is looking for a good place to open their practice, we need someone in the Yakima area. We need someone that will be willing to work with area seniors and regain a good reputation with area senior groups and politicians. This area has had 3 years of unlicensed practitioners who have decided not to become licensed and have worked against our

licensing efforts. It would help us greatly if there was a good practitioner willing to start their practice in that area.

Appendix G-6

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KRISTINE GEBBIE, Secretary of the Department of Health for the State of Washington	)	
	)	No. 91-2-003561-0
Plaintiff,	)	
vs.	)	
GEORGE "BUDDY WHITE dba DENTURE SERVICE	)	
Defendant	)	

DEPOSITION UPON ORAL EXAMINATION OF KRISTINE GEBBIE

Taken Before:

Sandra J. Nelson
Certified Shorthand Reporter
Of
CAPITOL PACIFIC REPORTING
2920 Harrison Avenue, N.W., Suite A
OLYMPIA, WA 98502
(206) 352-2054

September 8, 1992
Olympia, Washington

APPEARANCES

FOR THE PLAINTIFF: MR. JOHN H. KEITH
ASSISTANT ATTORNEY GENERAL
HIGHWAY LICENSES BLDG.
P.O. BOX 40110
OLYMPIA, WA 98504-0110

FOR THE DEFENDANT: Ms. LYNDA EATON
ATTORNEY AT LAW
LAW OFFICES OF TANYA M. PASHKOWSKI

690 HIGHWAY 2
SUITE B
P.O. BOX 940
LEAVENWORTH, WA 98826

MS. TANYA M. PASHKOWSKI
ATTORNEY AT LAW
690 HIGHWAY 2
SUITE B
P.O. BOX 940
LEAVENWORTH, WA 98826

ALSO PRESENT: GEORGE "BUDDY" WHITE

EXAMINATION INDEX

EXAMINATION RE-EXAMINATION

BY:

MS. EATON 5

MS. PASHKOWSKI 38

EXHIBIT INDEX

NO. DESCRIPTION MARKED IDENTIFIED

(NO EXHIBITS OFFERED)

BE IT REMEMBERED that on Tuesday, September 8, 1992, at 2:00 p.m., at the offices of Capitol Pacific Reporting, 2920 Harrison Avenue N.W., Olympia, Washington, appeared the above-named witness before Sandra Jo. Nelson, Notary Public in and for the State of Washington, residing at Cosmopolis.

WHEREUPON the following proceedings were had, to-wit:

KRISTINE GEBBIE, having been first duly sworn by the Notary, testified as follows:

MS. EATON: I am Linda Eaton, appearing on behalf of George White, from the law offices of Tanya Pashkowski in Leavenworth.

Mr. Keith: I am John H. Keith, Assistant Attorney General, counsel for the State of Washington.

The Witness: Christine Gebbie, Secretary of the Washington State Department of Health.

Ms. Eaton: And joining us in a few moments will be

Tonya Pashkowski and George White.

EXAMINATION

BY MS. EATON:

Q Hi. One of the things we're very interested in today is, we're interested in your past experience and employment with the Department of Health or it's related agencies for the State of Oregon. And I was wondering if you could give us some history as to your educational background and your employment history.

A. My educational background is – post-high-school, is a bachelor of science in nursing at Saint Olaf's College in Minnesota; a master of nursing from UCLA, and currently a doctoral candidate in the School of Public Health at the University of Michigan.

My employment includes work for the – what was then the Los Angeles County General Hospital, for UCLA, Saint Louis University, State of Oregon,

and the State of Washington, and some smaller things in between. Those are the major employers for whom I have worked.

Q You were employed with the State of Oregon: is that correct?

A Yes.

Q What was your position there?

A I was Assistant Director for Health of the Oregon Department of Human Resources, and my secondary title was Administrator of the Health Division of that department.

Q Assistant secretary - -

A Assistant Director for Health and Administrator of the Health Division of the Oregon Department of Human Resources.

Q Okay. What were your basic job responsibilities as the Assistant Director for Health?

A The job responsibilities were to manage the unit of that department that was in charge of what most

people would consider public health functions, monitoring the general health of the state, protecting against communicable and other conditions of public health importance, managing some programs directed at protecting the public health.

Q And specific programs that you managed were?

A Suppose it depends on what level of detail you want. Included programs of epidemiology, communicable-disease monitoring, non-infectious-disease monitoring, maternal and child health, health statistics, licensing of health facilities, development of a trauma system, environmental health programs of a number of kinds.

Q Was there supervision of boards and licensing in that position for public health entities?

A There was supervision of licensing for a number of either individual or facility kind of categories in the public health area, yes.

Q Do they have a breakdown in Oregon where they

have licensing, regulating and registered as to various categories of supervision for health care?

A No, not defined by statute.

Q Is it done that way in practice?

A Those terms are used to define how different professions are authorized by the state, I guess is the right word.

Q Okay. In Washington, I need to know what those terms mean. What is the difference between licensed and regulated, and does registered just mean signing up?

A I don't know that I can pass the test on citing that – those definitions. They're fairly precise definitions that are used in legislative negotiations around the regulation of health professions. **But they generally move in ascending order of specificity and control from registration, in which a person simply says, "I am X," and registers their name with a state** (emphasis

added); to certification, in which they provide some documentation of their qualifications for being an X; to full registration – or licensure, rather, in which the state much more closely supervises what the person is allowed to do and clearly limits anyone from not – from the acts that are otherwise covered by that licensure.

I'm certain I did not use the exact terminology of the documents that are used in that process, because I haven't memorized it.

Q But it is that kind of ascending - -

A Yes.

Q Have you testified as an expert in litigation dealing with the Dental Board in the past?

A No.

Q Okay. Have you worked as a consultant?

A. I have worked as a consultant.

Q For whom?

A Several agencies of the federal government, for

health foundations that have done projects that I've been a part of: in the far past, for various health institutions, for universities.

Q Were any of those related to dental services:

A No, they were not.

Q Okay. When they implemented the Denturist Act in Oregon, were you an employee of the state at that time?

A Yes, I was.

Q And what was your job title?

A The one I've already given you. I had only one job title - -

Q Is this the same job - -

A It's the same job. It's a dual title for the same job and that's the only job I've had for the State of Oregon.

Q Okay. I've got it. I keep wanting to make it two.

A I'm sorry. Yeah.

Q And as part of the enactment of the Denturists

Act, what was your responsibility?

A My responsibilities were to implement the act, that is, to translate the act into an administrative code, to employ appropriate staff, to go ahead and implement the code, make it happen.

Q After it was implemented, after the Denturist Act was implemented in Oregon, did you remain in that position?

A My recollection is that the act went into place approximately halfway through my tenure in the state; so five years, perhaps; perhaps longer. I don't remember for sure.

Q So I presume – I'm not real sure exactly how it all works, but I presume there are a variety of people who work under you and implement the ideas or the directions that are given by statute.

A Mm-hmm.

Q After the implementation of the Denturist Act in Oregon, what kind of fine tuning was necessary to

make it function as part of a statutory scheme?

A My recollection is that there were a couple of parts of it. The first part was dealing with the grand-parenting of folks who were deemed eligible to become denturists, fairly quickly; defining exactly what processes would be used for them to file their credentials and their experience; and what kind of oversights they would have to demonstrate; and then a second set of activities around the longer term implementation of an approval of a curriculum, and then a process for applying and testing of those who would have gone through a primary education program to become a denturist.

Q Was there a testing program for those who were grand-parented in?

A I can't remember.

Q As the act itself was actually functioning, did you see people's health – where the public health was in jeopardy from disease process because of the making

of dentures by non-dentists?

A There were disciplinary acts under that law of some volume. I don't think it was a huge volume. But the basis for those disciplinary actions would be somebody practicing unsafely outside the scope of their approved practice.

Q What would be included in unsafe practice?

A Might include any number of things. In the case of this general area of practice: failure to adequately inspect and diagnose the mouth, failure to appropriately fit dentures, failure to follow up appropriately on findings and . . .

Q Was there any changes in the Oregon law dealing with protection of the public health after it was enacted?

A Not that I recall.

Q Okay. Were sanitary conditions part of the infractions that would have been issued against Denturists under their act in Oregon?

A My recollection is that office management practices were a part of the description of expected behavior by a denturist and that there was some provision for an ongoing quality assurance program, and that failure to commit to that or follow through on it would be grounds for an action; and that that included, then, infection control and other safe practices.

Q Did you ever read any specific complaints against denturists on failure to diagnose a disease process?

A I have the general recollection that I did, but I couldn't cite a specific right now. I did read specific complaints, and I believe that some of them had to do with errors in what was found, but I don't know specifics.

Q When we talk about – when I use the words "disease process," it occurs to me that we may not be talking about the same things. I'm talking about – I would like to use it to refer to non-contagious

diseases, but, say, cancers and – What would those be called? – as opposed to viral processes that are out there and that may or may not be involved with sanitary conditions. Have you read Dr. Bolinder's (phonetic) affidavit?

A No.

Q Okay. He is quite concerned, it is my belief, in his affidavit that the use of denturists would result in the public being exposed to the non-diagnosis of things like cancer, mouthy cancer, asthma, diabetes, blood diseases, a variety of disease processes like that. And those are the kinds of things that I am interested in seeing if you heard or read complaints about.

A And, yes, I have heard complaints about that, that that is an issue raised around denturists' practice.

Q Beyond it being an issue, have you seen people who have suffered from those sorts of things and failure to diagnose those sorts of things

A **I have not personally seen people who would have suffered from such a thing** (emphasis added). As I said, I believe that I remember that that was a portion of one or more of the complaints that came through the agency during the time I was there.

Q Okay. Were you responsible for making budgetary recommendations for the State of Oregon?

A Yes.

Q Did the change to the use of the denturists impact the Oregon health budget?

A Yes.

Q Can you tell me how?

A We had to pay for the licensing process. We had to invest funds up front before fees could be collected to make it work, and then had to balance that budget.

Q And after it was implemented for five years or to the end of your tenure there, did it create a negative or a positive cash-flow?

A The licensing process paid for itself after it was in place for a while.

Q Okay. At any time did you see any surveys or cost analysis between what dentures cost from dentists versus from what dentures cost from denturists?

A Yes. I did see publications and comparisons of those numbers.

Q And which was the greater expense at the time of implementation of the act?

A My recollection of those studies is that generally denturists charged less for dentures than going through a dentist to get them.

Q Were there any studies after the act had been in place for awhile?

A No. But I don't know that that would have changed. I don't remember anybody looking into that.

Q Is it your recollection that denturists remained to be less expensive than dentists in terms of replacing dentures?

A As a general impression, yes. I think that price difference holds.

Q Is the state impacted by what is charged by denturists for dentures? Is there a portion of state funds given to individuals or given to care providers?

A The state, as an entity, provides dental care to populations for which it provides health-related care. At the time I was there, Oregon provided very little coverage for dental services; did mostly acute adult dentistry, and I do not believe provided dentures, or if it did so, did it on a very limited basis, for anybody. But that was not in my budget and I don't know the details of it.

Q Okay. In your current position, what is your personal involvement in the implementation of Dental Practice Act in Washington?

A Personal involvement, practically none.

Q Okay. Who administers that program?

A The Dental Practice Act is the responsibility of the

Dental Board. We employ – we, the department, employ staff that work at the direction of that board, jointly selecting the person who will lead the staff, and they are on our payroll. And we've – we at the department have a fairly large staff that works, some of them, with a specific board and, others, across several boards to related administrative purposes.

Q Is Linda McCue the head of that board? Is that – or how does she function on that board?

A I don't honestly know for sure. That's not a board that I have worked with directly and didn't double check names this morning.

Q Okay. Thanks. It's my belief that this state provides dental services to certain populations. Is that true?

A I believe it does. I know that it does. I should state my answer more fairly.

Q Do you review the budget for the dental services in this state as part of your current job?

A I see the budget for dental services that are provided by the Department of Health. That is not the only agency paying for health related services in this state, and I do not oversee the other state budgets in this area.

Q Does Medicare or Medicaid come through that same budget?

A No. Medicare is a federal budget. That does not go through the state at all. Medicaid is a state budget that goes through the Department of Social and Health Services, not through our department.

Q Not through the Department of Health?

A That's right.

Q Do you have any contacts with the Department of Licensing?

A Very limited. We're both cabinet agencies, so we cross paths.

Q Were you aware that denturists in this state are licensed by the Department of Licensing as

denturists?

A No, I'm not.

Q Well, what happens is they go in there and say: I'm a denturist. I make dentures. I'm going to take impressions, moving to the State of Washington. Will you license me? And the licensing department says yes, and issues them a license and –

MR. KEITH: I'm going to object. I think counsel's mischaracterizing a denturist's license instead of a business license.

MS. EATON: Yes, this is a business license.

MR. KEITH: Does counsel concede it's not a license to practice denturism, but a general business license?

GUEST ONE: Yes, I will concede to that. But it is usually fully disclosed at the time that they buy their state license that that is what they're going to do.

Q (BY MS. EATON) It is really curious how there is – there seems to be no connection between these two processes, which is the disclosure in buying the state business license and the Department of Health, and I need to understand how the Dental Board initiates disciplinary actions . . Can you tell me how the Dental Board initiates them, who they decide to prosecute, where they make their discoveries of who's practicing as a denturist?

A No, I cannot tell you in any detail.

Q What is the difference between what the Washington State Dental Association does than the Washington State Dental Board.

A The Washington State Dental Association is a voluntary professional gathering of folks who happen to be dentists, who gather for the reasons that any professional association gathers, I assume, which is to share common ideas, to often do continuing

education, to advance the purposes of their profession. They frequently lobby and do a variety of things.

The Washington State Dental Board is an official agency of the State of Washington charged with carrying out certain acts and their activities are limited to whatever the legislature has told them to do.

Q But doesn't the Dental Association monitor dentists as well, accept complaints, review complaints?

A Most professional associations of licensed personnel in the health professions accept complaints about members of their profession; and if they're a member of that association as well, will frequently – have a system for dealing with them and also frequently makes referrals to the related licensing board.

Q How are complaints against denturists brought to the state's attention?

A Complaints against any person in the area of health professions, licensed, regulated, otherwise, come to the attention of the board through dozens of routes that include specific referrals from elsewhere in the Department of Health because we've learned of something, that included referrals from professional associations in that area, include referrals from licensed health facilities like the hospitals, include numbers of the board reading newspapers and noticing things that attract their attention, including people showing up at meetings and saying: I think you ought to look into this. Those are a few of the ways I can think of that I know complaints have come in to one or more boards.

Q In the budget recommendations for 1991, it discusses 18.120, which is things that are called the Sunrise Act, which goes about saying that health professions should be regulated when there's clearly harm or where they will

endanger the health and safety, welfare of the public, and that this process will be reviewed on a regular basis. Are you aware of this?

(Emphasis added.)

A Mm-hmm.

Q At the time 18.120 was establish, there was a board established also to make these recommendations and reviews. It has since been disbanded. Can you tell me who it is that reviews health-care professionals under 18.120 today?

A Mm-hmm. When a Sunrise review is requested, it goes to the Department of Health and the State Board of Health arrives at a conclusion which is recommended back to the legislature. We often meet concurrently or have staff meetings concurrently to look at it, but the board arrives at its own judgment and the department arrives at its own judgment.

Q And have they looked at denturism?

A No, not in the tenure of the department.

Q Okay. So there is no specific individual, when a Sunrise profession comes through for review, that on a regular basis would review them; it's just the Department of Health and the Department of Health and Social Services?

A No. The State Board of Health is 10 very specific individuals and we are accountable, and I am one of those 10. And the staff of the board looks at it on their behalf, looks at materials that are developed. The department has a cluster of people who become directly involved in this process when it's triggered.

Q Does the department itself ever trigger this, say: I thing that we should look at a specific health field?

A We've not done so, so far.

Q Is that within their ability, their capacity?

A Given the number we've done, triggered by the legislature, and how busy that has kept us, I'm not sure that it's within our staffing capacity and I have not reread that statute to double check whether it's

within our legal capacity.

Q Okay. Are those professions which are new and addressed under the Sunset Act, approved under the Sunset Act – when it says that they are to be approved at the least restrictive level, consistent, what is the "least restrictive level?" How do you judge that? What goes into that judgment? (Emphasis added.)

A Goes back to the hierarchy of regulation that we talked about earlier, <u>of registration being the least restrictive, certification next, and licensing the most restrictive</u> that's used in this state, and the review focuses on how likely it is that people are apt to call themselves a "whatnot" without appropriate education, whether the term has meaning and can be understood by the public, what the risks entailed might be, what the degree of rigor might be needed to control that area. All of

those are the sorts of things that are talked about or looked at in the process. (Emphasis added.)

Q Do you look at what other states have done in their experiences as part of this process?

A Yes. Staff documentation usually includes some documents about how many other states regulate that area and what form of regulation they use.

Q. Harm to the public is the bottom line, I presume. As you review this, what . . . When we're talking about public harm in terms of the health, are we talking about, always, physical harm or are we addressing other issues as well? Because you said "public perception" as part of the things that you address that . . .

A No. I believe the regulatory approaches in this state take into account more than physical bodily harm that might ensue. Certainly, the amount of regulation or disciplinary action that focuses on

sexual impropriety with patients that doesn't result in bodily harm, but results in emotional harm, for example, is one of the areas. I think that's probably the best example.

Q Do you think that people know what denturism is,

A I doubt it. If you did an average quiz of the average Washingtonian, I doubt that it would score very high as a recognized item.

Q In Oregon, if somebody asks the average Oregonian, "Do you know what a denturist is," would it be different?

A I believe so.

Q Okay. What is are soft-regulated professions? What does that term refer to?

A ZI – not a term that I would – I think I would use, but I would guess it's a profession that – or professional group that has some internal mechanism for identifying people who are good at it and people who are legitimate and, I presume, issue

some documentation or identification in that regard that's not a part of the statutory scheme.

Q that's not a part of the statutory scheme. So the Dental Board wouldn't – the dentists of the State of Washington would not be self-regulating, but would be governed under statute?

A That is what I would understand that term to mean.

Q Okay. Were you aware that the State Dental Board tried to eliminate reciprocity for dentists in other states?

A I know that this state had a very limited reciprocity system until very recently.

Q How do you support that limited reciprocity?

A I've been working with the Dental Board to change that. It is now quite different than it was three years ago.

MR. KEITH: Counsel, just to maybe clarify, you've been using the term "Dental Board"

kind of freely here, and there is no State Dental Board in this state. Maybe we should be clear for the record. There is a Washington State Dental Disciplinary Board and a Washington State Board of Dental Examiners, and they're two separate boards.

MS. EATON: Right. Well, we are not talking about the Dental Examiners. We're talking specifically about the Disciplinary Board.

A The reciprocity issue is a dental examining issue, and I do attend for the Dental Board, because I'm . . . In Oregon it's a single board, and I have to stop and sort the two out sometimes.

Q (BY MS. EATON) I'm trying to be real careful to differentiate between and - -

MR. KEITH: Was your question: Has the State Dental Disciplinary Board tried to eliminate reciprocity?

MS. EATON: No, no. It was the Examining Board eliminating reciprocity. And then

all the rest of the questions dealt with the Disciplinary Board.

Q (BY MS. EATON) In this state, have you ever seen any complaints against denturists?

A I have heard about complaints about denturists in this state.

Q By individuals, by clients?

A I'm sorry, I don't know.

Q Where did you hear about them?

A From a staff member of the Department of Health giving me a summary of some information about complaints a number of years ago. Shortly after I came to the state, I was being briefed on issues.

Q Okay. When you were preparing for today, did you receive assistance from somebody, anybody?

A I met briefly with my attorney.

Q But no staff?

A No.

Q How would you define the term "denturism"?

A Denturism? As I understand it, it's the practice of fitting of dental plates in somebody's mouth, working directly with a client or patient to do that.

Q A lot of the current issues revolve around the taking of impressions.

A Mm-hmm.

Q And it is addressed differently within the statute. Impressions can be taken by supervised – in a supervised situation – "Supervised" is defined as having a dentist in the building, essentially – if it's for diagnostic purposes or for models. But taking of the impressions for dentures is a prohibited act by all people except dentists, the way I read it under the current statutory scheme.

A Mm-hmm.

Q Do you believe it's different than that?

A I haven't read the statute, looking for that scheme. Zl have no reason to believe it's different than that.

Q Okay. In your experience, has there been any time

when it was explained to you what the difference between taking an impression for a diagnostic model purpose versus taking an impression for a denture is?

A Explain to me.

Q Or do you know?

A I don't know. Those distinctions make sense to me as different reasons one would take impressions, and they would lead to different things afterwards. But I don't know that anybody ever sat and explained it to me.

Q Okay. Then you're going to have to help me out and explain it to me. Taking an impression for - -

MR. KEITH: Counsel, asked and answered.

MS. EATON: Okay. I wanted to know though.

MR. KEITH: It's already been expert in dentistry.

MS. EATON: Yes

Q (BY MS. EATON) I would like to know, I guess, what your opinions on some things are. To begin with, do you believe that denturists could reduce the cost of dentures or partials to the public in the State of Washington?

MR. KEITH: I'm going to object. This is – this witness is not here as some kind of an expert. I don't think opinions are an appropriate category of questioning at this deposition.

MS. EATON: Certainly, her opinions do carry a great deal of weight with the state. They are a part of her job and her duties, and her opinion is expressed to legislature. It is important that we know what her opinion is.

MR. KEITH: I would agree if there is some official opinion that is being expressed to the legislature. Are you asking if she has some kind of personal opinion, independent of her capacity as

Secretary of Health?

MS. EATON: We are deposing her in her capacity as Secretary of Health. We want - -

MR. KEITH: You're asking if there's some official opinion?

MS. EATON: Yes. I will settle for asking if there's an official opinion.

MR KEITH: Try and state a question.

Q (BY MS. EATON) In your position as Secretary of Health, in light of your past experiences in the Oregon legislature – in the Oregon Department of Health, do you believe that denturism in the State of Washington could reduce the cost of dentures and partials to the public?

A I've arrived at no conclusion about that at all.

Q Did you support denturism in the pas as a craft or skills, profession?

A Not sure what you mean by support.

Q I think anything other than not opposed to it.

MR. KEITH: Objection.

MS. EATON: That's not fair. You're right.

MR. KEITH: Can you define what action constitutes support? Or maybe you could break the question down.

MS. EATON: Okay. Let's think about support.

Q (BY MS EATON) Actively participate in innovative ways to make the Denturist Act of Oregon work within the statutory scheme.

A I'm not sure how you apply the word "innovative." My agency, under my direction, actively worked to make the law work.

Q Did it work?

A I think so.

Q What was its purpose?

A Its purpose was to allow for the legal practice of denturism in such a way that people knew that those

folks who held themselves out to be denturists met minimum qualifications and were under state oversight, as were many other regulated health groups.

Q Under that scheme, do you think that denturists were a crafts person or a semi-skilled health professional?

A I never tried to apply that distinction.

Q Do you think denturists are health professionals in any form?

A The catch-all phrase, "regulated health professions" or "licensed health professions" is generally used in state regulatory circles to mean anybody the state brings in under a regulatory scheme, so that a number of groups which a sociologist might not categorize as a learned profession **gets categorized as a health profession because they are regulated** (emphasis added). For example, certified nurses aid would not

be considered a health profession in the sociologist's view of the world, but are caught in that net of being considered one of the regulated health professions in many states, if not all. So **the term applies to whoever the state decides to put in that scheme** (emphasis added).

Q Are denturists in this state part of the regulatory scheme?

A Not to my understanding.

Q So they are outside of the health profession. Do you see denturism as a craft?

A Again that - -

Q A craft is something like manual skill, labor, manual labor skill.

A The process of constructing dentures seems to take a certain amount of skill, and there are a number of things done in the health related area by a variety of people, some of them licensed health professionals, some of them not, that take manual

professionals, some of them not, that take manual skill to do. So, yeah, I guess it is a manual skill, if the word "craft" fits that.

Q Did you read the Schick report?

A No.

MS. EATON: I'd like to take five minutes please

(Brief Recess.)

Q (BY MS. EATON) We need to know who it is that disciplines health-care providers who are not registered, certified, or licensed?

A to my understanding, if a person purports to be a something that is in violation of one of the related health professions acts, then the board that regulates that profession initiates the appropriate action against the person, working with the Attorney General's Office and/or prosecuting attorney depending on the issue involved.

Q Part of the process, as I understand it, behind

18.120 (RCW) was to eliminate turf wars, scope-of-practice wars. How does that come into play if the regulated profession is the person who is disciplining the un-regulated profession?

MR. KEITH: Objection. I don't understand the question, counsel. I don't know that we . . . Could you rephrase that? I don't think that's - -

MS. EATON: Sure.

Q (BY MS. EATON) What I'm

MR. KEITH: Maybe I can help. Can you define what you mean by discipline? Maybe I could throw this in. When I think of discipoine in the administrative context, it's license action, taking an action against somebody's license. How are you using the term "discipline"?

Q (BY MS. EATON) Well, discipline in the current context is civil contempt and injunction. And it relates back to the original question, which is: If the

providers are not registered or certified . . . And I believe you're telling me that the field that feels that they have been infringed upon, or it is within the scope of their practice, is the one who then becomes a disciplinary agency; is that correct?

A That is expected to take action in monitoring that area, yes.

Q When is it determined that it is not a scope-of-practice or turf war that is going on?

A As the term "scope of practice" is generally used in a number of discussions going on in this state, that's defining the limits where two licensed professionals rub up against each other, two different licensed bodies, defining where the line between them is; not a licensed body looking at unlicensed persons in their area of practice.

Q Okay. So the unlicensed person or the new health-care provider can never have a scope of practice or turf war with a licensed provider?

A Oh. I'd presume they possibly could. I was just telling you how I generally hear the term "scope of practice" used within this state today.

Q Okay. All right. To put it in context, the denturists feel that they have been out there all these years, have done this same job, making teeth, and they do not believe that they are dentists. It is only dentists who think that they are infringing upon activities that only dentists can do. So we need to understand how to get review under the system if you are an unregulated profession and the regulated profession says that you are inclusive.

MR. KEITH: Is that a question?

MS. EATON: Yes, it is.

Q (BY MS. EATON) How do you get review?

MR KEITH: I'm sorry. I'm going to object. That is confusing; asking her to perhaps restate it. And when you say "review," could you explain review by whom and what kind of review.

And I might also ask if, when you say "unregulated," do you mean also illegal practitioners? Are you asking how would an illegal practitioner gets somebody to review whether they should become legal or . . . I'm not sure what your questions are.

MS. EATON: Well, they are touchy terms, because I don't think that we're talking about illegal. I hope we're talking about extra-legal, unregulated and extra-legal as opposed to illegal. So that makes it even worse. That makes it even worse.

MR. KEITH: Could you . . . May not matter at this stage, as counsel reminded me at the break, but I don't know . . . If you have a definition of "extra-legal" as opposed to "illegal," I'd be willing to consider it.

MS. EATON: Okay. Extra-legal is having neither laws that make it a crime or against code, criminal or against code.

MR. KEITH: And I'd object that that

would be relevant to this proceedings, since it's been established that denture practice in the State of Washington is a regulated activity and that practice without a license is illegal.

MS. EATON: I KNOW. We get to do this time after time. It's a bad question. We better just start over, huh? Okay.

Q (BY MS. EATON) What would denturists in the State of Washington do to get recognized and supervised by the State of Washington?

A They would have to get the legislature to pass a law making them a regulated health profession, or use the initiative petition process as a way of doing that.

Q Could they get review under 18.120?

A That process of going to the legislature, seeking to become identified, leads to the Sunrise review process of the Department of Health

Q So they, as a collective group, would approach a

representative or a senator and say, "We are interested in become recognized. Would you introduce a bill"? As the bill was in the process of being introduced, then it would be reviewed under 18.120?

A I don't know the exact trigger point, but at some point in that process the department has gotten, and I presume will in the future, get letters from the chairs of the appropriate committee of jurisdiction saying, "We have been asked to regulate Profession X and we would like to trigger the Sunrise review process. Please report back to us by . . . ." And the process goes on.

Q How long does the process take?

A My recollection of the ones we have done is that it's generally less than a year, but several months.

Q Do you recall some of your more recent reviews?

A I believe one of the ongoing ones was for physical therapy assistants, one for medical laboratory

personnel.

Q Okay. So as they introduce legislation, the process of introducing legislation . . . I'm sorry. You said that you were not sure at what point the triggering mechanism was - -

A That's correct.

Q Okay. You said earlier that during you tenure, denturists had never asked for a review or there had never been a request for review of denturism under 18.120?

A That's correct.

Q did you come into your office at the time that the Department of Health was created?

A That's correct.

Q That's 1985?

A 1989

Q '89. The law was passed in '85?

A No. The law was passed in 89

Q '89. Okay. So we're only three years.

MR. KEITH: Further question, counsel?

MS. EATON: I don't think so. As I am reviewing, I'm thinking about it. I'm trying to . . . Obviously had lots of questions. Some of them have turned out to be just not appropriate. And I guess I want to know more about who to ask and I don't know exactly how to get there.

Q (BY MS. EATON) Does the Dental Disciplinary Board recommend statutory language"

A They could.

Q Have they, to your knowledge?

A I don't specifically remember, but a number of the boards have.

Q In your tenure, have they generated any legislation that you know?

A I do not remember the Dental Disciplinary Board generating legislation.

Q Dentists that supervise denturists have their licenses removed. In that process, we have, once

again, come back to this disciplinary process, how – who disciplines who. Do you see the . . .

MS. EATON: I won't ask that. That's not a well thought out question.

Q (BY MS. EATON) Are there any experimental medical or dental programs in the State of Washington?

A. Experimental?

Q Mm-hmm.

A By which, you mean?

Q Under the code process, I believe that the Department of Health is allowed to have experimental medical programs to try different ways to practice for different professionals. I think California currently is doing – they use – they have a similar statute and they use it very liberally occasionally, and they are allowing dental hygienists to go into people's homes and practice, and it's considered experimental, specific number of years.

Then it's reviewed to see if they're going to continue the program.

Q Are there any programs currently in the Department of Health in the State of Washington - - -

A Not that I am aware of, that fit that description.

Q I'm not looking for that specifically, but if there were any experiments or . . .

A No.

MS. EATON: I need to peek through my notes one more time and then I think I'm done.

MS. PASHKOWSKI: You want to ask that question (indicating).

Q (BY MS. EATON) What is the basis for removal of licenses of dentists who supervise denturists?

A I can't speak for the Board of Dental – the Disciplinary Board on that. That's their job.

Q Okay. And the person whose name – who would know, just Dental Disciplinary Board?

A The board chair or the staff to the board. That

may well be the person whose name you asked me about earlier, and my recollection of names is shaky sometimes at best.

Q Okay.

MS. PASHKOWSKI: May I ask a question, John?

MR. KEITH: One question.

MS. PASHKOWSKI: Okay.

MR. KEITH: Let's get you on the record.

MS. PASHKOWSKI: Tanya Pashkowski.

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EXAMINATION

BY MS. PASHKOWSKI:

Q The process where you discussed the Department of Health's participation in the legislature's enactment of new bills that would govern the health-care providers, what is it that the Department of Health does? They create a – they do research, they create a document? Could you describe for me what it is that the Department of Health does?

A The department staff frequently convene some interested people who would know something about that area, generally including whoever it was who is advocating licensure of the group in question. They are generally asked to produce documents that they would use to support the reasons for this. The department independently will search the literature, query other states who may have regulated in that area; if experts are identified, invite them to come in; and generally prepare, then, some kind of report to summarize all of that and draw some conclusions in

regard to the hierarchy of potential regulatory schemes. And that document's made available, through the department management structure, to me and to the State Board of Health and it draws its conclusions.

Q And that document is used in what way by legislature?

A It's available to them. I don't know how they use it.

Q Okay. I guess that answers my question. Thank you. Never did understand how . . I understand that legislature has a mandate to depend upon you to provide information. So I want a bill, I go to the legislature, I say, "I want a bill." They depend upon you for information. It's never been clear to me how that mandate that you prepare the information is then dovetailed back into the legislative process, and I see it's not clear to you either.

A No. You asked about the document. The document

exists.

Q Right, right.

MS. EATON: We believe the document . . . We know – we've seen one that has been prepared by the Department, we just can't figure out to get back - -

MS. PASHKOWSKI: What the legislature does with the information, which is not a part of your job description.

Q (BY MS. PASHKOWSKI) You don't participate in interfacing with the legislature wit these reports; is that correct?

A I make a recommendation to the legislature about that Sunrise, specifically write to them and say: I believe X, as does the Board of Health.

MS. PASHKOWSKI: Okay. That answers my question. Thank you.

Q (BY MS. PASHKOWSKI) Is there . . .

MS. PASHKOWSKI: This is just an idle

question.

MR. KEITH: This is also the second - -

Q (BY MS. PASHKOWSKI) Is there a name for that document? I mean do you call those papers anything?

A Sunrise Review.

Q Sunrise Review papers?

A (Witness nods head.)

MS. PASHKOWSKI: Okay.

MS. EATON: We're done. Thank you.

(Concluded at 3:10 p.m.)

(Signature Reserved.)

CERTIFICATE

I, SANDRA JO NELSON, a duly authorized Court Reporter and Notary Public in and for the State of Washington, residing at Cosmopolis, do hereby certify;

That the foregoing deposition of KRISTINE GEBBIE was taken before me on the 8th day of September, 1992, and thereafter transcribed by me by means of computer-aided transcription; that the deposition is a full, true and complete transcript of the testimony of said witness;

That the witness, before examination was by me duly sworn to testify the truth, the whole truth and nothing but the truth, and that the witness reserved signature.

That I am not a relative, employee, attorney or counsel of any party to this action, or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the

outcome thereof:

That upon completion of signature if required, I shall herewith securely seal the original transcript and serve same upon MS. LYNDA EATON, counsel for the Defendant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 15th day of September, 1992.

Sandra J. Nelson, CSR No. NELSOSJ577L2

APPENDIX H

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SPOKANE

State of Washington on The Relation of Mary G. Faulk, Director, Department of Licensing	)	No. 88-2-03339-5
Plaintiff	)	Order Granting Preliminary Injunction
vs.	)	
Claude A. Edlin	)	
Defendant	)	

1. HEARING

1.1 Date: April 21, 1989

1.2 Appearance:

(a) For the plaintiff: The State appeared by John H. Keith, Assistant Attorney General:

(b) For the defendant: The defendant did not appear and was not represented by counsel.

1.3 Purpose: To consider plaintiff's motion for a

Preliminary injunction.

1.4 Evidence: The court considered its record, including affidavits filed by the parties and heard the argument of counsel.

I. FINDINGS

The Court, having considered the evidence and argument of counsel finds:

2.1 Jurisdiction: That pursuant to RCW 18.130.190(2) this court has jurisdiction over the defendant and the subject matter of this proceeding.

2.2 Invasion of Right: That plaintiff, as well as the citizens of this state have a right to enforce the laws of this state prohibiting the unlicensed practice of dentistry and other healing arts or professions. Plaintiff has a well-grounded fear that defendant is engaged in the practice of dentistry in this state without the required license to do so and has done so on a continuing basis. This conduct has subject, and if permitted to continue would further subject, the

citizens of this state to the dangers of, and possible harm from, receiving treatment from and following the advice of a person who has not demonstrated the required training or skill in dental practice, and who is not subject to the continuing direct regulatory requirements of the State of Washington for such practice.

2.3 Statutory Injunction: Pursuant to RCW 18.130.190(2) the unlicensed practice of certain professions, including dentist, is grounds for an injunction. Engaging in dentistry in defiance of law is a nuisance per se and is subject to an injunction even if said conduct is also a crime.

2.4 Public Interest: The protection of the public health, safety and welfare requires that a preliminary injunction be issued in this case to prevent defendant from holding himself out for the practice of dentistry and actually practicing dentistry without first obtaining a license to do so. The state has made an adequate showing of such public

interest requirement.

III. ORDER

On the basis of the foregoing findings, it is ordered:

3.1 Enjoined: That defendant is restrained and enjoined from holding himself out to the public as being available for the practice of dentistry and from actually practicing dentistry without first obtaining the required license to do so. This preliminary injunction shall prohibit the defendant from engaging in the practices listed in RCW 18.32.020 which states:

> 18.32.020 Practice of dentistry defined. A person practices dentistry, within the meaning of this chapter, who (1) represents himself as being able to diagnose, treat, remove stains and concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, or jaw, or (2) offers or undertakes by any means or methods to diagnose, treat, remove stains or concretions from teeth, operate or

prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the same, or take impressions of the teeth or jaw, or (3) owns, maintains or operates an office for the practice of dentistry, or (4) engages in any of the practices included in curricula of recognized and approved dental schools or colleges, or (5) professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth.

Except as permitted by RCW 18.32.030(6) which permits:

(6) The making, repairing, altering, or supplying of artificial restorations, substitutions, appliances, or materials for the correction of disease, loss, deformity, malposition, dislocation, fracture, injury, to the jaws, teeth, lips, gums, cheeks, palate, or associated tissues or parts; providing the same are made, repaired, altered or supplied pursuant to the written instructions and order of a licensed dentist which may be accompanied by casts, models or impressions furnished by said dentist, and said prescriptions shall be retained and filed for a period of not less than three years and shall be available to and subject to the examination of the director of licensing or his authorized representative.*

3.2 Dates: This order shall be effective from

April 21, 1989., and shall continue until further

order of this court.

3.3 Bond: No bond shall be required by the state pursuant to RCW 4.92.080.

Dated this 21st Day of April 1989.

Harold Clark – Judge

Presented by:

John H. Keith
Assistant Attorney General
Attorney for Plaintiff
Washington Bar No. 3277

Copy received: Did not appear.

* Provided that the defendant shall be permitted to fit and construct replacement dentures when the original dentures were fitted by a licensed dentist.

**At the time of this hearing, Judge Clark ordered the state to hold full evidentiary hearings, in his court, into the denturist issue. Evidence of that statement may be obtained in the archives of the Spokane County Superior Court system.

Appendix H

APPENDIX I

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SPOKANE

State of Washington, on Relation of Mary G. Faulk, Director, Department of	)	No. 88-2-03338-7
	)	Order Granting Preliminary Injunction
Plaintiff,	)	
Vs.	)	
Gary R. Fox,	)	
Defendant	)	

I. HEARING

1.1 Date: April 21 1989

1.2 Appearaances:

(a) For the plaintiff: The state appeared by John H. Keith, Assistant Attorney General;

(b) For the defendant: The defendant did appear and was not represented by counsel.

1.3 Purpose: To consider plaintiff's motion for a preliminary injunction.

1.4 Evidence: The court considered its record, including affidavits filed by the parties and heard the argument of counsel.

II. FINDINGS

The Court, having considered the evidence and argument of counsel finds:

2.1 Jurisdiction: That pursuant to RCW 18.130.190(2) this court has jurisdiction over the defendant and the subject matter of this proceeding.

2.2 Invasion of Right: That plaintiff, as well as the citizens of this state, have a right to enforce the laws of this state prohibiting the unlicensed practice of dentistry and other healing arts or professions. Plaintiff has a well-grounded fear that defendant has engaged in the practice of dentistry in this state without the required license to do so and has done so on a continuing basis. This conduct has subject, and if permitted to continue would further subject the citizens of this state to the dangers of, and possible harm from, receiving treatment from and following

the advice of a person who has not demonstrated the required training or skill in dental practice, and who is not subject to the continuing direct regulatory requirements of the State of Washington for such practice.

2.3 Statutory Injunction: Pursuant to RCW 18.130.190(2) the unlicensed practice of certain professions, including dentistry, is grounds for an injunction. Engaging in dentistry in defiance of law is a nuisance per se and is subject to an injunction even if said conduct is also a crime.

2.4 Public Interest: The protection of the public health, safety and welfare requires that a preliminary injunction be issued in this case to prevent defendant from holding himself out for the practice of dentistry and actually practicing dentistry without first obtaining a license to do so. The state has made an adequate showing of such public interest requirement.

III. ORDER

On the basis of the foregoing findings, it is ordered:

3.1 Enjoined: That defendant is restrained and enjoined from holding himself out to the public as being available for the practice of dentistry and from actually practicing dentistry without first obtaining the required license to do so. This preliminary injunction shall prohibit the defendant from engaging in the practices listed in RCW 18.32.020 which states:

> 18.32.020 Practice of dentistry defined. A person practices dentistry, within the meaning of this chapter, who (1) represents himself as being able to diagnose, treat, remove stains and concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, or jaw, or (2) offers or undertakes by any means or methods to diagnose, treat, remove stains or concretions from teeth, operate or prescribe for any disease, pain, of the same, or take impressions of the teeth or jaw, or (3) owns, maintains or operates an office for the practice of dentistry, or (4) engages in any of the practices included in the curricula of recognized and approved dental

> schools or colleges, or (5) professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth.

Except as permitted by RCW 18.32.030(6) which permits:

> (6) The making, repairing, altering or supplying of artificial restorations, substitutions, appliances, or materials for the correction of disease, loss, deformity, malposition, dislocation, fracture, injury to the jaws, teeth, lips, gums, cheeks, palate, or associated tissues or parts: providing the same are made, repaired, altered or supplied pursuant to the written instructions and order of a licensed dentist which may be accompanied by casts, models or impressions furnished by said dentist, and said prescriptions shall be retained and filed for a period of not less than three years and shall be available to and subject to the examination of the director of licensing or his authorized representatives.*

3.2 Dates: This order shall be effective from April 21, 1989, and shall continue until further order of this court.

3.3 Bond: No bond shall be required by the state pursuant to RCW 4.92.080

DATED this 21st day of April 1989

Harold Clark
Judge

Presented by:

John H. Keith
Assistant Attorney General
Attorney for Plaintiff
Washington Bar No. 3277

Copy received:

Gary R. Fox

*Provided further that the defendant shall be permitted to fit and construct replacement dentures when the original dentures were fitted by a licensed dentist.

**The order by Judge Clark that the state was to hold a full evidentiary hearing, in his court, may be obtained at the Spokane County Superior Court system.

SUPERIOR COURT, STATE OF WASHINGTON,
SPOKANE COUNTY

STATE OF WASHINGTON ON THE RELATION
OF MARY G. FAULK, DIRECTOR,
DEPARTMENT OF LICNESING No. 882033387
Plaintiff/petitioner

Vs. Order of Dismissal

Gary F. Fox
Defendant/Respondent
Washington State Dental Association
Third Party Defendant

The Clerk of this Court having notified the attorneys

Of record more than thirty days prior to this date

And no action as required by CR 42(b)Z(2) having

Been taken in this cause.

It is now ordered, adjudged and decreed that This cause be and the same is hereby dismissed without prejudice

Done in open court December 7. 1994

Notice mailed 11/1/94

Judge/Court Commissioner

Appendix I

SECTION – 12

Appendices J – M-2

APPENDIX J

RCW 18.19.090: Registration of counselors and hypnotherapists

The secretary shall issue a registration to any applicant **who submits, on forms provided by the secretary, the applicant's name, address, occupational title, name and location of business, and other information as determined by the secretary, including information necessary to determine whether there are grounds for denial of registration or issuance of a conditional registration under this chapter or chapter 18.130 RCW** (emphasis added). Applicants for registration shall register as counselors or may register as hypnotherapists if employing hypnosis as a modality. Applicants shall, in addition, provide in their titles a description of their therapeutic orientation, discipline, theory, or technique. **Each applicant shall pay a fee determined by the secretary as provided in**

RCW 43.70.250, which shall accompany the application.
[1991 c 3 Section 24; 1987 c512 Section 9.]

*These were the same requirements denturists met when they/we registered with the department of licensing which was regulating health professions at that time.

Appendix J-1

RCW 18.02.070
Issuance of licenses – Scope – Master application and fees - -
Action by regulatory agency, when - - Agencies provided information.

(1) Any person requiring licenses which have been incorporated into the system shall submit a master application to the department requesting the issuance of the licenses. The master application form shall contain in consolidated form information necessary for the issuance of the licenses.

(2) The applicant shall include with the application the sum of all fees and deposits required for the requested individual license endorsements as well as the handling fee established under RCW 19.02.075.

(3) Irrespective of any authority delegated to the department of licensing to implement the provisions of this chapter, the authority for approving issuance and renewal of any requested license that requires a prelicensing or renewal investigation, inspection, testing, or other judgmental review by the regulatory

agency otherwise legally authorized to issue the license shall remain with that agency. **The business license center has the authority to issue those licenses for which proper fee payment and completed application form have been received and for which no prelicensing or renewal approval action is required by the regulatory agency** (emphasis added).

4. Upon receipt of the application and proper fee payment for any license for which issuance is subject to regulatory agency action under subsection (3) of this section, the department shall immediately notify the regulatory agency with authority to approve issuance or renewal of the license requested by the applicant. Each regulatory agency shall advise the department within a reasonable time after receiving the notice: (a) That the agency approves the issuance of the requested license and will advise the applicant of any specific conditions required for issuing the

license: (b) that the agency denies the issuance of the license and gives the applicant reasons for the denial: or (c) that the application is pending.

(5) The department shall issue a master license endorsed for all the approved licenses to the applicant and advise the applicant of the status of other requested licenses. It is the responsibility of the applicant to contest the decision regarding conditions imposed or licenses denied through the normal process established by statute or by the agency with the authority for approving issuance of the license.

(6) Regulatory agencies shall be provided information from the master application for their licensing and regulatory functions.

NOTES:

Effective date – 1990 c 264: "This act shall take effect July 1, 1990. The director of licensing may immediately take such steps as are necessary to

ensure that sections 1 and 2 of this act are implemented on their effective date." [1990 c 264 Section 5.]

Appendix J-2

RCW 19.02.810
Master license system – Existing licenses or permits registered under, when.

A license or permit affected by chapter 182, Laws of 1982 and otherwise valid on April 1, 1982, need not be registered under the master license system until the renewal or expiration date of that license or permit under the laws in effect prior to April 1, 1982, unless otherwise revoked or suspended.

[1982 c 182 Section 46.]

Appendix J-3

APPENDIX K

HEALTH PERSONNEL

GOAL 6. TO MEET THE HEALTH CARE PERSONNEL NEEDS OF THE POPULATION.

6A. By 1990 permit entry into a health profession by applying the least restrictive level of credentialing needed, if any, to protect the public interest.

RCW 18.120.040 requires State Health Coordinating Council (SHCC) review and recommendations to the State legislature on proposals to credential new categories of allied health occupations, and on proposals to substantially change the scope of practice of existing regulated occupations. Review by an independent body provides a broader decision base for the Legislature than they would otherwise hear from the professions' proponents.

STRATEGIES:

(1) The SHCC should continue its credentialing review while refining the process and criteria.

(2) The SHCC should develop and propose policies

to the Legislature and Department of Licensing regarding generic credentialing issues.

OBJECTIVE 6B: By 1990, ensure the appropriate type, supply, training, and quality of health care personnel.

It is the proper role for SHCC to assess the supply and future demand for various types of health care personnel, how these match with those produced by state-supported institutions, and the access of qualified low income students to training. With decreasing federal contributions to the financing of medical education, the financial burden is falling on the states.

STRATEGY:

(1) In future editions of this State Health Plan, health planning system should identify appropriate state health personnel policies and statewide health personnel resource allocations guidelines. Among the

issues that should be addressed are:

(a) The extent of surpluses or deficits in the supply of health professionals in total and by specialty and how this should impact on the state-supported institutions' enrollment policies and funding.

Appendix K-1

Numerous audit findings doubles state's fraud-loss insurance premium.

Prepared by Jason Mercier, Budget Research Analyst Evergreen Freedom Foundation.

October 6, 2004

Olympia, WA – Washington's continued fiscal mismanagement and inadequate audit oversight has resulted in a doubling of the state's Employee Dishonesty Blanket Bond Insurance premium and a 400 percent increase in the deductible for fiscal year 2004-05. The Office of Financial Management (OFM) has identified Washington' numerous audit findings as the culprit for this insurance premium increase.

In a letter sent to state agencies regarding Washington's Employee Dishonesty Blanket Bond, OFM wrote:

In compliance with RCW 43.17.100, the referenced commercial insurance policy has been renewed. This policy provides coverage for loss sustained by the

state of Washington through any fraudulent or dishonest act(s) committed by any of its employees. This year's renewal has been extremely difficult. Although Great American has provided the state fidelity coverage for a number of years, their quote for the 2004-2005 policy term was unacceptable. The state's insurance broker approached the insurance market, but because of the states claims history and the number of audit findings relating to inadequate internal controls, it was not easy to find carriers willing to provide coverage. We were able to obtain coverage but at a cost. Premium has doubled and the deductible has increased from $100,000 to $500,000. OFM also sent the following e-mail to one state agency regarding the difficulty in obtaining continued fraud-loss insurance coverage: "Our broker is in the process of renewing the state's fidelity bond for 2004-05. Because of our claims activity and findings by the Auditor's Office we are having a

difficult time getting quotes. One carrier is looking hopeful but before they will give us a quote they need more information."

The current trend for yearly audit findings indicates the difficulty in obtaining this insurance next year may only increase. Consider that in 2001, the state auditor issued 13 audit findings. That number grew to 24 by 2002.

Appendix K-2

PROPOSED LEGISLATION TO CERTIFY DENTURISTS

HEALTH PROFESSIONS REVIEW COMMITTEE RECOMMENDATION AND RATIONALE TO THE STATE HEALTH COORDINATING COUNCIL

Recommendation

Approval of the bill which would certify denturists amendments as recommended in the SHCC staff analysis as these were amended by the Committee.

Rationale

1. The percentage of denture wearers is decreasing and possibly the numbers are but there will still be a large number needing dentures in the future.

2. While laudable, the state's Medicaid and the Dental Association's Access programs are not reaching all of those in need.

3. The changes in wording recommended by staff on pages 9, 10, 11, and 13 of the Staff Report will clarify some details and strengthen consumer protection and are acceptable. Changes in the wording on limitations in practice, as proposed by the denturists'

counsel (page 6 of testimony), are acceptable.

Note: These changes are already incorporated in the enclosed bill.

4. A dental educator (or prosthodontist should be appointed to the Denturist Advisory Committee.

5. The educational requirements in this bill can be met because there is an on-going, accredited denturitry educational program in Milwaukie, Oregon. Others, such as the Academy of Denturitry in Seattle, may well respond to demand once the occupation is legal for their students.

6. Testimony was impressive on the fragility of the elderly with bone loss and medical problems co-existing with dental problems. General dentists refer such cases to prosthodontists and we would expect denturists to do likewise. Other mid-level practitioners in the health professions are taught to recognize their limitations and refer, so there is no reason to believe denturists would not do so.

7. **We found no evidence that anyone has ever**

been harmed by denturists (emphasis added).

8. With the inclusion of wording on tasks prohibited to denturists (page 13 of staff report), **there is no threat to the public's health if denturists are allowed to serve the public with replacement dentures** (emphasis added). The practice is legal in most of the civilized world.

9. With respect to partials, **we have found no problems with the provision of partials by denturists** (emphasis added) though we would prefer to see positive and appropriate cooperation between dentists and denturists in order for that to be most successful.

10. Denturists charge less than dentists. **Having concluded the safety of their service, especially as applied to replacement dentures, the general public (regardless of income), insurance carriers, and the**

state Medicaid program should be able to benefit from this option (emphasis added).

Appendix K-3

STATE HEALTH COORDINATING COUNCIL

SHCC HEALTH PROFESSIONS REVIEW COMMITTEE (HPRC) PUBLIC HEARING ON BILL TO CERTIFY DENTURISTS

January 6, 1987
1 – 63 p.m.
Vance Airport Inn, Seattle

HPRC members Present: Dewey Desler, Acting Chair
George Reis

SHCC Staff: Luci Phillips

Material given to HPRC on hearing date:

--Table from Washington Dental Service titled "Full Dentures, Partial Dentures:
--Denturist Association of Washington, revised Code of Ethics
--December 30, 1985 letter to John N. Thibert from Oregon Health Division
--October 15, 1986 letter to the Oregon Denturist College from the Oregon Department of Education
--December 31, 1986 Letter to Dr. John Thibert from the Oregon Educational Coordinating Commission.

Hearing attended by eighteen persons representing the Washington State Dental Association, the Denturist Association of Washington, Washington Dental Services Inc., Senior Lobby, #51 Union Retirement Club, the Oregon Denturist College and the public.

SYNOPSOS OF TESTIMONY

The Chair announced that Chris Rose from the

Department of Licensing will not be present to give testimony but left the message that the Department's position has not changed from previous testimony. That is, it would take no position on whether the bill should be enacted and would have no trouble administering the bill after making some small technical changes. He will update the 1985 fiscal note.

Robert Fenno, Executive Vice President of Washington Dental Services

Showed chart that illustrated a dramatic decline in the number of dentures per 1,000 cases. Went from 189 in 1970 to 13.6 in 1986. Dentists have made a very successful effort to help people keep their teeth. The typical insurance co-pay is that the patients pays 50% of the price of dentures and WDA pays the other 50%. If the patient obtains dentures at the University of Washington Dental School clinic. WDA Pays the full 100% but the school has a problem

obtaining patients. Has offered dentures since they started in 1954.

James Lord, prosthodontist and UW Professor

On page 5 of the SHCC Staff Report, quotation #4, the prosthodontic expanded auxiliaries underlined are not denturists as interpreted by staff.

Robert Gross, Senior Citizen and dentist

The Dental Association's Access I program is comprehensive, not just denture care. The Access II program provides free dentures in King County only. Has offered 100 free dentures. So far has produced 36 full dentures. Qualifications for Access I and II are the same. The income threshold has been raised to $14,000 per household.

In areas which have legalized denturists, there has been no increase in demand for dentures.

New rinses are reducing oral health problems and reducing the need for dentures in the future. The number of dentists in the state per population is

greater than rest of nation; we are getting close to a surplus. He observes that, at the Foss Home, dentures are needed but people are not obtaining them even though money is no barrier. There are over 18 clinics in King County offering free dentures. DSHS 9Medicaid) is still covering dentures. I conclude there is no need for denturists in this state. George Reis suggested the Access Program might try sliding scales on income eligibility.

Luci Phillips questioned whether the public health clinics require a means test before they will give free or low cost dentures. Reply: No.

Low utilization of the Access Program is due to lack of effective communication. Question: Would one of the reasons be that not enough dentists are participating? Reply: Don't know but we need to improve communication with dentists.

Charles Paxton, staff of the Washington State Dental Association

Ms. Phillips's comment about low participation of the Dental Access Program speaks to a total misunderstanding of the mix of services provided. There is an astoundingly low demand for dentures. One thousand dentists are participating. Only 14% of the services are prosthodontics.

The tables on page 6 of the SHCC Staff Report makes bad assumption that the rates of edentulism in the United States are applicable to Washington state. People in this state see a dentist 30% more often than in other states. We have had dental insurance for three decades. Washington state has the highest percentage of people covered by dental insurance.

Assuming the same decline from 1975 to 1990 as happened between 1960-75 is fallacious. The resulting 26.6% of people age 60+ with at least one denture is too high. Our Dental Access Program shows that only 17% of the people need one full

denture and that's the upper end because some of the count may have been duplicated. Washington Dental Services estimates .85% of the elderly covered by insurance need dentures.

On page 7, the data reported by staff on the number of dentures dispensed in Yakima and some other areas are incorrect.

Kathleen Hutchins, Health Committee of the Senior Citizens' Lobby

There are some people with medical problems that make denture wearing uncomfortable, but most people do all right and simply need dentures repaired or replaced. I have been going to the same dentist for the past thirty years and would go to him, not a denturist, if I needed dentures. But I know a lot of people who need their teeth replaced and they just don't. The Senior Lobby Health Committee is 100% in favor of a bill being passed for denturists to provide repairs and replacement for people who need

the help and simply cannot afford the high cost of going to a dentist. Want to cut out the middle-man. I'm not talking about using a denturist without having a dentist approve the condition of the mouth and health of the patient

Regarding the rinses that have been so successful in Europe, in England and Sweden they have a national health plan so they have a tremendous program in preventative care. What this country needs is a similar plan.

Opposed to denturists providing partials directly to the public. Perhaps in the future the denturists will be trained well enough to do so, but we feel the first step should be taken to allow them to provide full dentures to the public. The needy people do not use the Access Program because they don't know about it. Not all seniors belong to organizations to learn about this. The people who need the help are not listening to programs of classical music that provide

public service announcements.

Charles Conlan, denturist from Cashmere, WA

Has passed the very stringent Montana Denturist examination. Denturitry is at the northern, eastern and southern borders. He commends the faculty of the Oregon College. Many of us were trained by the military. Just because we don't have the diploma doesn't mean we don't have the skills. We voluntarily reach out to continuing education. We are taught to recognize abnormalities and refer to specialists.

George Reis observes the Denturists' code of ethics implies an ethical requirement to know one's limits, but thinks a more specific statement should be made.

Harry Stockinger. President of the Boeing Machinist Unition/s 751 Retirement club

Today a greater proportion of senior citizens' incomes are going to defray health costs than before Medicare was enacted. My organization is going to eagerly and aggressively look for ways to cut health costs. The

Senior Citizens' group of Boeing has already passed a motion to endorse, without qualification, the present efforts of the denturists. It ought to be acceptable to the insurance carriers. The Access Program doesn't seem to be a viable way to reduce the at risk senior citizens. It's either one of the best kept secrets in the medical field, or it isn't finding acceptance. It reminds me of the doctors' justification for not limiting their fees to the Medicare level (Initiative 92). "If their patients would only plea poverty, the doctors would reduce their fees in proportion to the degree of poverty." Now isn't that a fine thing for a doctor/patient relationship?

Freedom of choie for the consumer to negotiate a contract with an alternate supplier is the practical way to approach this problem. It's the only way to reduce costs while retaining the pride and dignity of the patient at the same time. We who have negotiated union contracts are very familiar with

jurisdictional fights and the hyperbole that goes along with them. I'm confident your committee has the expertise to see through to the useful core of the argument. Meanwhile, a large segment of our citizens need relief and protection.

Brent Kandarian, Montana State Board of Denturitry

Sixteen hundred dentists in King County being willing to give away 100 dentures is an insult to dentistry. The Idaho State University denturitry program was withdrawn for financial reasons. Therefore, the Academy of Denturitry is arranging education for denturists by working through the American Institute of Pathological Science being headed up by Dr. Ronald Gerrutry who will bring in the instructors necessary. Dr. Lord or no other dentist left a message on our telephone answering machine. Regarding Dr. Lord's statement about our insurance, that was in the 1985 review material. The

name of my insurance company is St. Paul. The reason we pay $100 is that $100 is the minimum fee that the insurance company will write for.

I totally agree with Dr. Kribbs testimony except for the drawing of the tooth. There are two ways of designing partials, one being modification of a tooth and the other leaving the tooth alone. Cutting into the enamel reduces the tooth's ability to resist decay; denturists design partials not requiring this.

Quoting the Journal of Prosthetic Dentistry, five dental schools on the West Coast require the dental student to make an average of one-half partial. The number of teaching hours on partial denture design ranges from 20 to 80 hours for the Western Region. The requirement for dental school graduation in Washington is that you make from 5 to 16 dentures; the national average was 5 to 20. On the survey question of how many teaching hours are spent specifically on laboratory relations or work authorizations, the range was from 1 to 80. On the

survey question of: Do you feel the portion of teaching time in prosthodontics has increased or decreased in the past 15 years, the answer for the West Coast was: 1 school increase, 1 school no change, 5 dental schools decreased. I approve of this because dentists should spend time on prevention, not dentures.

Most partials do not require tooth modification. Rests are always available to be placed. Question: What percentage of partials are designed to require tooth modification? Reply: don't know. Cannot count on dental labs to tell you because they depend on dentists' referrals for their business.

Having a prosthodontist on the Montana Denturitry Board has turned out to be a nightmare; he was a stoolie. Quotation from a testimony that 90% of Idaho denturists' patients do not go to dentists and I think that is true of Montana and will be true in Washington. Costs are not a major reason

sometimes it is accessibility. Sometimes because they think they are getting a better product for their money because the denturist is a specialist.

Question by George Reis: Has the Montana Board disciplined any denturists? What's been the disposition of those disciplinary actions? Reply: We've had 18 complaints. Thirteen were filed by dentists, two over refunds, one deleted because it had nothing to do with denturism, one found the denturist not negligent, and one is now under review. The complaints from dentists were harassment – about the dental practice act.

Joanne Thibert, Dean of Oregon Denturist College

The college is alive and well. The college has been approved by the Health Division, licensed by the Department of Education, and authorized to offer and confer an Associate of Applied Science degree. There is no other place that we need to get approved From. The Oregon Dental Association has harassed

us and intervened and even tried to block admission of students to our college. If we decide to work

The SHCC has rejected these bills because:

--they allow denturists to make partials;

--no education available in Washington;

--inconsistent provision regarding how initial candidates are to be certified; and

--ambiguous sections, definitional problems relating to the scope of practice.

We believe all of these flaws still exist. We support a recommendation that a legislative study be done on the need for dentures in the state.

Question from Dewey Desler: Is there any bill that would be acceptable to the Dental Association. Reply: I doubt it. You can go to Oregon and get a $200 denture and get an inferior product. The price from Oregon denturists ranges between $100-$500, about the same as you would find in Washington from

dentists. Denturism is analogous to saying the person who manufactures the artificial heart should be allowed to implant it.

Question from Luci Phillips to Dr. Lord: What percentage of partials require modifying teeth. Reply: All of them. The current teaching in dental schools is a tooth needs to be modified if it does not have acceptable planes to guide the partial into place.

Denturist Association Summary by Richard Atherton

The entire issue is public access to denture care services by qualified technicians who, by certification, become denturists. The program provides for educational requirements and reciprocity with other states. The Access Program averages 1,000 patients a year. I believe there are more out there, especially in the rural areas, who will use denturists if available. What this really gets down to is "Can we maintain our monopoly." The public will benefit from the denturists' competition. The Department of Licensing will provide controls to

protect the public.

Consumer Summaries

Harry Stockinger: Mr. Paxton's remark about Canada proves my point. For equal work, the American dentists have been overpaid and the denturists underpaid.

Kathleen Hutchins: If lab techs make good dentures for dentists, then denturists would be foolish to do inferior work in independent practice. I believe they will do quality work.

Dewey Desler question to Dr. Lord: The Senior Lobby wants to see eash access to replacement and repair of dentures. What are the quality of care problems that might be associated with this? Reply: We still need the skill of the dentists, even in delivering the reapir job back to the patient.

Desler question to denturists: What are the quality of care problems? Reply: I agree with Dr. Lord only he has it turned around. I believe the denturists is more

capable than the dentist because he does his own work. Our two week course in Advanced Oral Pathology at ISU provided more of the pathological training from dental textbooks than a four year dental program. This is testimony provided by Dr. Garruty.

George Reis question to Brent Kandarian: Do you have any statement about the sunset review in Montana. Reply from Atherton: This is guilt by association. If there are problems in Montana, they will be handled by Montana. Reply from Kandarian: Our denturitry board is no different from any other state board. Vague wording .

10. Denturists apparently charge less than dentists. Having concluded the safety of their service, especially as applied to replacement dentures, the general public (regardless of income), insurance carriers, and the state Medicaid program should be able to benefit from this option.

Appendix K-4

REMOVABLE DENTURE PROSTHETICS

(Formal Training – Clock Hours)

Denturists – Approximately 1,280 hours

Dentists – Approximately 77 hours

Denturist licensees after April 1, 1985 completing dental related educational programs of not less than two years in the United States Armed Forces and additional denturist training at Idaho State University or the American Institute of Pathological Sciences, or both. The military dental health schools are accredited as educational institutions by the Southern Conference of Colleges and Schools, which is an accrediting agency recognized by the Montana State Board of Regents meeting the requirements of 37-29-303 (2) MCA.

Figures compiled from "Dental Education in the United States 1976." This study was done by the Council on Dental Education of the American Dental Association in cooperation with the American Association of Dental Schools. Of the 60 dental

schools these groups accredit;, 58 responded. Graduates of these schools are allowed to be examined for licensure in every state. Dental educators report that training in removable prosthetics has de lined further since this report was first published.

"37-4-302. RECOGNITION OF DENTAL SCHOOLS. In determining what shall constitute a recognized dental college or school and/or recognized school of dental hygiene, the board shall be guided by the standards, canons, and practices required for such recognition by the council on dental education of the American Dental Association."

NOTE: A dentist can be licensed in Montana with as little as 77 hours formal training in dentures and without a clinical examination for dentures (documented by the Western Regional Examining Board who administer the clinical examinations for dentistry). This condition could appear as negligence

in court, leaving Montana's general fund vulnerable as the "deep pocket" in litigation.

REMOVABLE PARTIAL DENTURES

Denturist – Approximately 245 Clock Hours

Dentist – Approximately 8 Clock Hours

CLINICAL ORAL PATHOLOGY

Denturist – Approximately 72 Clock Hours

Dentist – Approximately 30 Clock Hours

RADIOLOGY

Denturist – Approximately 72 Clock Hours

Dentist – Approximately 19 Clock Hours

DENTAL EDUCATORS SPEAK OUT

ON

THE QUALITY OF DENTURE EDUCATION IN DENTAL SCHOOLS

1. "Although graduates would be licensed to provide prosthodontic treatment, they would lack clinical experience in this discipline." Journal of Prosthetic Dentistry, January 1984. David N. Firtell. D.D.S., et al, authors.

2. "It is a sad state of affairs when dental educators tacitly admit that technicians are more skilled and can produce better results than those that dental students can be trained to perform. If this is the case, than why not let technicians perform intraoral procedures, too? No wonder denturists are gaining credibility in the eyes of the public." Reprinted in Dental lab Review, September 1984, from an original article from The Academy of General Dentistry's

publication AGD Impact. William W. Howard. D.M.D.. author.

3. "The trend at many dental schools has been to decrease the emphasis on prosthodontic curriculum and allow increased exposure to preventive dentistry. ...However, educators in prosthodontics have expressed concern about the recent dental school graduate's ability to provide adequate prosthodontic care for patients." The Journal of Prosthetic Dentistry, October 1984. Thomas D. Taylor, D.D.S., et al authors.

4. ...."it appers that the typical dental school may be failing to prepare future dentists adequately to diagnose and devise a treatment plan for removable prostheses...As a dental educator, I can personally attest to the perceived decrease in emphasis that removable prosthodontics is receiving in the dental school curriculum during the past decade. Ultimately, if these trends are not reversed, we will

witness a marked decline in the quality of treatment rendered to our patients who require removable prosthesis." Quintessence of Dental Technology, April 1985, Robert P. Renner, D.D.S., Editor.

5."Nevertheless, the more removable prosthodontic treatment dental students complete while in dental school, the better able they will be to treat these types of patients in practice. It appears to the authors that in some regions this experience is too low." The Journal of Prosthetic Dentistry, August 1982, H.W. Herring, D.M.D., et al authors.

6. "All dental educators stated that partial denture design is the dentist's responsibility, while 77.9% of dental technicians reported that they design most or all of the removable partial dentures fabricated in their laboratories. ....If it is assumed that partial denture design is the dentist's responsibility, it appears that prosthodontic education is failing to prepare dentists adequately for the task." The

prepare dentists adequately for the task." The Journal of Prosthetic Dentistry, November 1984, Thomas D. Taylor, D.D.S., et al. authors.

7. "The overall decrease in curriculum emphasis on removable prosthodontics during the past 15 years at 33 of the 50 responding dental schools can only serve to compound the problems alluded to in parts I and II of this study. It appears that educators are losing ground in the task of providing adequate preparation for dental graduates in the field of removable prosthodontics." The Journal of Prosthetic Dentistry. November 1984, Thomas D. Taylor, D.D.S., M.S.D., et al. authors.

Appendix K-6

RCW 18.32.005

Regulation of health care professions – Criteria.

See chapter 18.120

(Displays that the Dental Practice Act, RCW 18.32, must also comply with the Health Professions Regulation Act, RCW 18.120.)

Appendix K-7

APPENDIX L

WSDA NEWS A publication of the
Washington State Dental Association

September 1988

What's Inside...

Denturist operations face court dates

The state is cracking down on illegal denturist operations. The WSDA has been in the forefront of efforts to get the state to take action.

State takes action against denturists

Constant and increasing pressure from the WSDA urging the state to take action against illegal denturist operations is showing results.

As we went to press, denturist Rick Miller had an August 15 date in Thurston County Court on charges the he has violated an injunction filed in July 1986. Cease and desist orders were issued in February, 1988, in cases involving Gene Perdigone and Bernie Rae, and a stipulation to cease operations is in the negotiation phase in another case.

Mary Faulk, new director of the State

Department of Licensing, has told WSDA representatives that vigorous action will be taken to shut down denturists operating illegally in Washington state. Her assurances follow a similar promise made by Donna Stringer, former deputy director of the department, at a meeting with WSDA representatives in June.

The meetings are part of the campaign the Association has conducted to promote action by the Department of Licensing and the Attorney General's office.

The effort has included repeated contacts with department personnel as well as a letter from WSDA President James McGraw to Attorney General Kenneth Eikenberry citing the complaints.

The Association has pointed out that the problem is increasing and that the impression is being given that the law won't be enforced.

The Department has assured the WSDA that

every complaint is being investigated and that action will be stepped up.

WSDA will be monitoring progress and will keep appropriate component dental societies apprised.

In the meantime, it would be helpful to have a compilation of the number of patients requiring corrective treatment after going to a denturist and what problems dentists are seeing. Please send information about any such patients, whether or not they have complaints, to the WSDA Central Office, 2033 6th Avenue, #333, Seattle, WA 98121

The WSDA would also like to be informed of any new denturist operations established in your area.

Mary Faulk named licensing director

Mary Faulk has been named director of the State Department of Licensing, replacing Theresa Aragon.

Viewed as a troubleshooter for Governor Booth Gardner, Ms. Faulk's previous positions in state government were director of the state lottery, followed by head of the Department of General Administration.

Before joining state government, she was a top-level administrator at Tacoma General Hospital, which volunteered her as a member of the Governor's transition team in 1984.

Ms. Faulk is a native of Okanogan, where her father, Dr. Harold Ellsperman, practiced dentistry for 58 years. Her uncle, the late Dr. George Ellsperman, who practiced in Bellingham for 55 years, was 1930-31 WSDA President and a member of the Board of Dental Examiners from 1919 to 1924.

Appendix L-1

Denturists' future uncertain as state pushes to close offices

By MICHELLE C. BEUTOW

Washington denturists may be losing their long-running battle to receive recognition from the state as legally sanctioned allied health professionals.

Assistant Attorney General John Keith, working on behalf of the Washington State Department of Health's Dental Disciplinary Board, has state that he wants to wrap up all the denturitry cases he is investigating by the end of the year.

"I want to get this off my desk. I want to get my involvement with this under control," said Keith.

Keith's goal is to issue permanent injunctions against the denturists to restrain them from operating their businesses without a license.

The denturists say they are offering a safe, valuable public service.

Denturists are dental technicians who make, fit and repair dentures directly for the public. They do not diagnose or treat diseases or deal with malformation – instead referring patients with those problems to a dentist.

Denturists generally charge one-third to one-half less than dentists to fit a patient with dentures.

According to Robert Cross, administrator for the National Denturist Association (NDA), denturists are allowed to practice legally in Idaho, Montana, Oregon, Colorado, Arizona and Canada

In Washington, denturists have been fighting to be recognized under state law RCW 18.120 – Regulation of the Health Professions Act (the "Sunrise Act"). The law was passed in 1983 to guide the legislature in setting up regulatory programs to credential non-regulated health professions.

John Beresford Welsh, Jr., an attorney with the Office of Program Research in the state House of

Representatives, wrote a letter in 1990 to Rick Miller, a Cashmere denturist, saying that the Sunrise Act could be applied to the denturitry profession, if the Washington state legislature chooses to do so.

"Denturists as such are not specifically recognized by law. Their practice is not illegal, but rather extra-legal...

"Denturists...are one of the 145 auxiliary health occupations and professions providing health care services to the public in the extra-legal sense. The state only regulates some 27 health professions. Hence, the scope of activity of denturitry overlaps somewhat with the practice of dentistry as well as what dental technologists are authorized to do under dental supervision. This is not necessarily unusual in the health care field." Welsh wrote.

But Keith says that although the profession of denturitry is not regulated, the practice of making

dentures is, under the Dental Practice Act, chapter 18.32 RCW. The Dental Disciplinary Board wants to close down denturists on the basis of that code, which states that among the definition of practicing dentistry are persons who "profess to the public by any method to furnish, supply, construct, reproduce or repair any prosthetic denture, bridge, appliance or other structure to be worn in the human mouth."

Ballard denturist George White said that he and his fellow denturists are caught in a legal circle. The Dental Disciplinary Board wants to shut denturists down for practicing dentistry without a license, but the state legislature has to this date refused to regulate them as an allied health profession under the Sunrise Act.

They're trying to keep us like stepchildren in the closet. They don't want to regulate us," George White, a Ballard denturist said.

We've volunteered to be regulated and they're

not doing anything,: said Gary Fox, former head of the Washington Association of Denturists (WAD).

FOR MORE THAN six years, 32nd District Rep. Joanne Brekke has been fighting to get a bill lpassed that would give denturists legal status in the eyes of the state. But Brekke says the potential for getting a bill passed has been "losing ground, not gaining."

Brekke attributes the refusal of the state legislature to regulate denturists to strong lobbying efforts from the Washington State Dental Association (WSDA). She said the WSDA has mounted a "very heavy-duty campaign" against denturists.

She said that there are two reasons that the legislature might not wish to regulate denturists - questions about the safety of their practices and questions about whether or not they are cutting into dentists' traditional "turf" by offering denture

services at a discount.

Brekke said that denturists have shown that they can operate safely and responsibly.

"I do believe this is a turf battle," said Brekke, commenting that the WSDA has "one of the larger PAC entities" in the state of Washington. The WSDA has more than 7,000 members.

Brekke noted that recently efforts have been stepped up to shut denturists down.

But Keith said he is simply trying to get a long-running problem resolved to his satisfaction. He denied that the WSDA has put pressure on him to put denturists out of business.

"We don't follow mandates from the dental association," Keith said. He also said that he doesn't consider his efforts to close down denturists to be a crackdown but rater part of an ongoing effort.

But denturists say there has been an increased effort to close their practices.

"It's the little guy fighting the giant, said Fox. "We don't know if five days from now we'll be working."

Some denturists have noticed that their dollars are no longer being accepted by publications that used to run their advertising. Others, who had been active members of the WAD, have suddenly cut back on the involvement with the group. Denturists claim they are being continually pressured with subpoenas in which the Department of Health is listed as the plaintiff; denturists say that their lawyers have advised them that some of the subpoenas have not been issued properly.

Robert M. Huey, the Department of Health health care investigator, who has been serving state denturists with subpoenas to bring their business records to Olympia for review, declined to comment on his role in closing down denturists.

KEITH SAID THAT questions about safety are the motivating factor behind the injunctions he is obtaining against the denturists' practices.

"This conduct has subjected, and if permitted to continue would further subject, the citizens of this state to the dangers of, and possible harm from, receiving treatment from...a person who has not demonstrated the requisite training or skill in dental practice..." read part of a recent preliminary injunction against White meant to stop him from practicing denturitry.

But when interviewed, Keith declined to cite any specific instances of harm caused by denturists to their patients. He said that even if denturists are doing a professional job with fitting dentures, they still should not be in business.

"There may be some success stories out there, but that doesn't excuse them from breaking the law," Keith said.

Some state denturists have entered into

affiliations with dentists in order to avoid charges of practicing dentistry without a license. They view the affiliation the same as if a dental technician were making dentures for a dentist – the usual, legally acceptable practice in Washington.

But Keith said that denturist cannot use the affiliation as a way to operate legally. He said that compliance with the Dental Practice Act means that a licensed dentist must examine, prescribe and fit all patients dentures.

Even Brekke, a denturitry advocate, agrees that the affiliation strategy will not put denturists into compliance with the Dental Practice Act. The only way for denturists to operate legally is if they are regulated as their own allied health profession.

She said she doubts a bill setting up guidelines for regulating denturists will pass in the near future.

Such a bill was introduced by Dennis Braddock, head of the House Health Care Committee

during this legislative session. But the bill never got out of the committee. Although the bill will have a chance to be re-examined during the next legislative session. Brekke expects that it will die in committee because of a lack of support.

"I wish I could be more positive, " Brekke said.

She said that it would take a "strong, committed effort" from the public to get a bill regulating denturists passed.

Brekke views a strong senior citizen coalition as the most likely lobbying group to get a denturist bill pushed through legislature. But citing seniors' large number of health care concerns, she said she doubts that they will choose to make denturitry one of their prime issues.

The Yakima Valley Council of Senior Citizens has been perhaps Washington's greatest senior citizen advocates of denturist, praising the low-cost denture services denturists offer. But other groups have not been as vocal. The Puget Sound Council of

Senior Citizens would like denturists to be regulated by the sate said Max Roffman, a member of the group's board of directors. But they have not pushed the issue.

The Seattle chapter of the Gray Panthers, an influential senior citizen group, took a neutral position on the matter the last time it was presented to them for endorsement consideration. Mildred Johnson, chapter president, said the issue of denturists would be reconsidered if it is brought before the group again. A Gray Panther who wished to remain anonymous said that in the past a board member who is a dentist has lobbied strongly against endorsing denturists.

Another possible denturist ally, said Brekke, might be insurance companies who recognize denturists' potential for keeping denture costs down.

Denturists say that their patients often submit claims to insurance companies and that many companies do pay the claims. But insurance

companies contacted, including King County Medical Blue Shield, said that their policy is that denture work must be done by a licensed dentist.

ENTURISTS SAY THAT even though the state is not regulating them as an allied health profession, that they are trying to run their businesses, which they consider to be "extra-legal," in a legitimate manner. White's patients, like many other denturists', must sign a form that states that they understand he is a denturist, not a dentist.

Denturists obtain master business licenses as required by the state Department of Licensing. On the license applications, they note that their business is denturitry. White said that because the state knows that he and others are denturists, but still grants them licenses to operate, it is implicitly approving their right to exist. But an administrator from the Department of Licensing said that master

business licenses simply help to regulate certain business practices; they do not address whether or not a type of profession has a right to exist.

"It's only a licensing function, not a regulatory function," the administrator said.

Keith cautions denturists not to look to the courts, either, for help in becoming a regulated profession in Washington. Denturists have been hoping that a full hearing on the subject will prove they have a right to operate in the state. But, Keith said that "the courts are not in the business of second-guessing the legislature." He said that unless denturists can prove that the Dental Practice Act is unconstitutional, courts will only decide whether or not the denturists are in compliance with the act...not whether they should be regulated by another law.

Keith said at least four preliminary injunctions and four more permanent injunctions

against the practice of denturitry have been issued in his "current round" of investigation of non-compliance with the Dental Practice Act.

Tanya Pashkowski, a Leavenworth lawyer representing a number of Washington's denturists, did not return phone calls inquiring about her plans fo presenting her clients' cases in court.

THE NUMBER OF denturists now operating in the state is unclear. Fox said he knows of at least 11 practicing denturists, but understandably, denturists are not eager to draw attention to themselves these days.

As the Department of Health works to put them out of business, many remain determined to operate, even if it means working behind closed doors. One denturist who recently had most of his equipment seized and was ordered to close his business, no longer advertises but operates out of his basement.

The NDA's Cross said that denturists will continue to offer their services even if the state will not license them.

"Denturism is older than you and me, "Cross said. "Paul Revere made George Washington's teeth and Paul Revere was not a dentist."

Fox said he is not ready to concede the battle. "This is my home and I want to work here," he said.

Appendix I.-2

Ken Eikenberry

ATTORNEY GENERAL OF WASHINGTON

7th Floor, Highways-Licenses Building – Mail Stop P

8 71 – Olympia, Washington

July 13, 1988

James c. McGraw, D.D.S., President
Washington State Dental Association
2033 Sixth Avenue #333
Seattle, WA 98121

Re: Denturism

Dear Dr. McGraw:

I appreciate your prompt response to my request to Dr. West for more specific information about the current level of unlicensed practice of dentistry by denturists in Washington. I followed up by discussing this matter with attorneys in our licensing division, including a specific discussion of persons named in your letter. I trust that the following information will correct the misperception that we have been inactive in this area.

In 1982, working with the Department of Licensing and the Dental Disciplinary board, this office, in a series of actions which were consolidated, sought and obtained an injunction in Thurston County Superior Court against ten persons practicing "denturism." Insofar as we are aware, that action was effective at that time to essentially stop the rendering of direct services to the public by denturists without the required involvement of licensed dentists.

Denturists can function as dental labs making and repairing dentures; however, to do so they must work pursuant to the prescription of a dentist. Therefore, when a complaint is received, the department must investigate to determine whether the manner in which they are providing services comports with the law.

In October of 1986, the department advised that Mr. Ettner, one of the defendants subject to the 1982 injunction, had begun practice again. Promptly

thereafter, on November 3, 1986, we filed an action on behalf of the board against Mr. Ettner for contempt of the previously issued injunction. Mr. Ettner ceased practicing and, after some continuances by the court at Mr. Ettner's request, we obtained a contempt order. We do not believe Mr. Ettner has been in practice again.

In July of 1986, based upon an investigation by the department, we filed an injunctive action against Mr. Miller in Chelan county. That court entered a restraining order against Mr. Miller, which was extended several times. An arrangement was worked out whereunder Mr. Miller would work only under the supervision of a Wenatchee dentist. The case seeking an injunction was held open in the event Mr. Miller failed to comply with the arrangement. Some time later in 1987, the relationship between Mr. Miller and the supervising dentist apparently broke down, and Mr. Miller allegedly returned to open.

unlicensed (illegal) practice. This information was investigated by the department, reported to our office, and we prepared to activate our injunction case.

In the same general time frame, early 1988, the department investigated and received additional indications of possible illegal denturism practice. Our attorneys met with the department in January of 1988 to discuss the overall situation. The general conclusion was that the Miller case would be pursued, independently, and the department would proceed with its other ongoing investigations. Shortly thereafter, Mr. Miller filed a separate action in Thurston County Superior Court against the Department of Social and Health Services, another of our client agencies. Since a holding that Mr. Miller was practicing illegally would resolve both cases, our attorneys decided that it would be advantageous and efficient to consolidate the two cases. The county

chosen for consolidation was Thurston county, since a prior decision on the major issue rendered there in 1982 had been favorable, as well as for other technical reasons. Mr. Miller's attorney agreed to consolidate the cases, but they appeared to delay the paperwork necessary for consolidation.

As a result, we filed a motion for preliminary injunction in Chelan County (as the case was still situated there). The stipulation for consolidation then arrived and that case was transferred and consolidated in Thurston County, effective June 17 1988. We immediately noted a motion for a preliminary injunction in the Thurston County court for July 5, 1988. After Mr. Miller's attorney sought a continuance of that hearing, the court granted a restraining order, and continued the matter until July 18 on the issue of a preliminary injunction. A copy of the court's order is attached for your information. Subsequently Mr. Miller's attorney

withdrew, so it is possible the July 18th date may be changed.

As to the Hansons, we received an investigation file from the department in early 1987 regarding alleged unlawful practice in Bellingham. By the time we received the file, the business had been closed so there was no business to enjoin. A few months later, the department advised that the Hansons were operating on an Indian reservation, on a limited basis, under a licensing ordinance passed by the tribe. There was also an indication that the tribe might hold an ownership interest in the business. The location and possible tribal ownership interest raises many jurisdictional issues, so we have been corresponding with the Bureau of Indian Affairs about these issues. Recently we received notice that the BIA would not cooperate in any action by the state.

The department is continuing to investigate this

complaint with a view to developing detailed facts, and we are researching the legal issues. The department is, as well, investigating a more recent report of activity by the Hansons in Anacortes. When we receive that report, we will review it and decide how bests to proceed.

In the fall of 1987, we received a report from the department about Mr. McPherson. We responded with suggestions as to how to proceed investigatively to support an injunction request. Our understanding is that the investigation is currently being completed. We understand the department is also investigating three recent complaints, regarding Mr. Fox, Mr. Edlin and Mr. Allison, which you mentioned in your letter.

This office is aware of the issue and arguments being raised by the denturists in support of legalizing their practice as well as the arguments in opposition, which is to maintain the current law. We believe

independent practice by denturists is not legally permitted in this state, and we have sought to enforce the law, within the limits of our resources, by seeking to enjoin such illegal practices.

You are aware of the current status of the department's various investigations from your recent meeting with representatives of the department. Pending the outcome of the Miller case in Thurston County, our attorneys are discussing the appropriate actions for these investigations as they are completed.

In short, there has been activity in challenging illegal denturist actions, and when the department finds or develops evidence of illegal practice, there will be enforcement actions.

If you have further questions, please do not hesitate to contact me or Jeff lane of our Licensing Division.

Sincerely,

Ken Eikenberry

Attorney General

Nja

Attachment

Cc: Presidents, component dental societies

Mr. Robert VanSchoorl

Ms. Judy Mayo

Appenidix L-3

State of Washington

DEPARTMENT OF HEALTH
Health Professions Quality Assurance Division
P.O. Box 47867 * Olympia, Washington 98504-7867

June 17, 1996

Rick Larsen
Director of Public Affairs
Washington State Dental Association
2033 Sixth Avenue, #333
Seattle, Washington 98121

Dear Mr. Larsen:

One of the discussion items at the Board of Denture Technology meeting was the unlicensed practice of denturism in Washington. As part of that discussion, the recently published article in the Washington State Dental Association Newsletter was shared with the board.

On behalf of the Board, I wish to express our agreement with you regarding the unlicensed practice of denturism and we, too, hope that the Department of Health will vigorously pursue and prosecute those individuals who are violating the

denturist as well as dental statutes.

Also, to assist dentists in identifying licensed denturists. we have provided you with a current listing of all licensed denturists in Washington.

We look forward to working with you in the future on issues of mutual concern.

Sincerely,

Eric Hansen

Chair, Board of Denture Technology

Enclosure

Cc: Ron Weaver, Director, Health Professions Quality Assurance

Washington State Denturist Association

Dental Quality Assurance Commission

Board of Denture Technology

(Full list available upon request!! 206-272-1887

ADA

American Dental Association

www.ada.org

CURRENT POLICIES

Adopted 1954-2005

ANTITRUST (in part)

Antitrust Jurisdiction (1995:648

Resolved, that the ADA actively support legislation which would eliminate the split of antitrust jurisdiction between the Federal Trade Commission and the Department of Justice by placing all non-private antitrust enforcement within the purview of the U.S. Department of Justice

Antitrust Reform Relying on Market Power (1995:648)

Resolved, that the Association supports legislative

and regulatory activities to change the current antitrust safe harbor guideline for dental networks based on percentage of provider participation in favor of guideline relying on market power.

Antitrust Limitations (1994:643)

Resolved, that the ADA continue to work closely with constituent and component societies to provide the most current and comprehensive antitrust information and guidance available, on an as-needed bases, and be it further Resolved, that the ADA Board of Trustees utilize appropriate resources to work with other provider groups to amend antitrust laws to allow dentists and other providers to negotiate collectively with health care purchasers.

Antitrust Reform (1994:637)

Resolved, that the Association supports changes in federal antitrust laws that will enable dentists to compete effectively within the health care system, and be it further

Resolved, that the ADA initiative in antitrust reform includes: repeal of McCarran-Feerguson; relief to permit components and/or constituent societies and the ADA-recognized specialty organizations to form networks of dentists with the ability to negotiate and contract with area and regional health plans and health alliances; and reforms that are not limited to the proposed medical model of antitrust reform, but will provide effective relief to practicing dentists consistent with the unique aspects of the dental care marketplace, and be it further

Resolved, that Resolution 105H-1993 (Trans.1993:708), Federal Antitrust Laws, be rescinded.

Power and Funding of FTC; Unfairly Discriminatory Rulings (1979:635)

Resolved, that in the public interest the appropriate agencies of the American Dental Association continue to take affirmative action on the following

items:

1. Support legislation to limit the power and funding of the FTC.
2. Communicate and where practical combine efforts with other groups to challenge all rulings that are unfairly discriminatory to the dental profession.
3. Communicate with members of the American Dental Association as to the progress and effectiveness of these actions.

FTC Rules that Adversely Affect the Public (1978:529)

Resolved, that the Board of Trustees use all needed resources immediately to combat the Federal Trade Commission's proposed trade regulatory rules that adversely affect the public we serve and dental practice.

Jurisdiction of FTC and Application of Antitrust Laws (1976:891

Resolved, that the American Dental Association, in cooperation with other like learned professions to be determined by the Board of Trustees, seek legislation either by amendment of existing statutes or by the creation of an entirely new bill that would exempt these associations from the enforcement jurisdiction of the Federal Trade Commission and the application of the federal antitrust laws.

DEFINITIONS (in part)

Opposition to Dental Benefit Plans or Programs Conflicting with ADA Policies (1995:620)

Resolved, that the American Dental Association is opposed to any dental benefit plan or program and any financing mechanism for the delivery of dental care which conflicts with the policies or mission of the ADA

ILLEGAL DENTISTRY (in part)

Sale of Dental Equipment to Illegal Practitioners (2001:436

Resolved, that the ADA strongly urges dental equipment manufacturers and suppliers to develop and implement guidelines which preclude the sale, transfer or conveyance of new and used dental equipment and supplies (except "over the counter" consumer care products) to illegal practitioners of dentistry, and be it further

Resolved, that the guidelines include the requirement that before manufacturers or suppliers sell, transfer or convey dental equipment and supplies to persons they believe plan to use the products in the practice of dentistry, the manufacturers and suppliers first verify that the purchaser is licensed to practice dentistry in the state where the products will be delivered, and be it further

Resolved, that the guidelines also include a requirement that contracts, purchase orders, and invoices used to sell, transfer or convey dental

equipment and supplies require purchasers intending to use the equipment or supplies to provide dental care to include their dental license number, and be it further

Resolved, that in the case of as yet unlicensed dental students or recent graduates, the guidelines allow for the sale, transfer or conveyance of dental equipment and supplies, provided that the student or recent graduate supplies verification of current attendance in or graduation from an accredited dental school

Activity to Stop Unlicensed Dental or Dental Hygiene Practice (1999:949)

Resolved, that each constituent dental society be urged to support enactment of legislation which gives each Board of Dental Examiners the means to stop the illegal practice of dentistry or dental hygiene by an unlicensed person.

Dental Societ Activities Against Illegal Dentistry (1977:934; 2001:435

Resolved, that the American Dental Association urge constituent and component dental societies to inform the Council on Dental Practice of society activities which relate to combating illegal dentistry, and be it further

Resolved, that the Council on Dental Practice provide this information to all constituent and component societies on a timely and periodic basis, and be it further

Resolved, that the American Dental Association Board of Trustees be authorized **to provide financial aid to any constituent dental society that is faced with the imminent prospect of a substantial effort to legalize or promote denturism or any illegal practice of dentistry in its state through legislative action or use of the initiative process.** (Emphasis added.)

Opposition to "Denturist Movement" (2001_436

Resolved, that **the Association vigorously opposes denturism, the denturist movement, and all other similar activities, regardless of how they are designated, in this country.** (Emphasis added.)

"Denturist" and "Denturism" (1976:868; 2001:436

Resolved, that when the words "denturist" or "denturism" and all synonymous terms are used in American Dental Association publications, **the terms should be accompanied by a brief but prominent footnote indication that a "denturist" is a person who is educationally unqualified to practice dentistry in any form on the public,** and be it further

Resolved, **that constituent and component societies act in concert with the American Dental Association.** (Emphasis added.)

LEGISLATION – STATE (in part)

Use of Expert Witnesses in Liability Cases

1986:531)

Resolved, that the American Dental Association urge constituent dental societies to actively support legislation and changes in court rules that would require plaintiffs and their attorneys in professional liability actions to include with each complaint the affidavit of a health care professional, who practices in the same field or specialty as the defendant and who has reviewed the patient record and related materials, stating that there is reasonable and meritorious cause for filing the action, and be it further

Resolved, that constituent dental societies be urged to actively support legislation and changes in court rules that would require expert witnesses to possess the clinical knowledge and skill to qualify them on the practices and customs of practitioners in good standing in the locality where the defendant practiced when the incident occurred, and be it

further

Resolved, that constituent dental societies also be urged to actively support legislation and changes in court rules requiring courts in appropriate cases to instruct juries on the availability of alternative treatments and the role of patients in their own care.

ADA Assistance in Legislative Initiatives (1982:513)

Resolved, that when a state dental association notifies the American Dental Association that it is involved in the signature gathering phase of an initiative petition which would adversely affect dentistry in that state, then the American Dental Association shall assist the state dental association in developing strategy for media releases, and be it further

Resolved, that all media responses during the signature gathering phase be released through the state dental association.

Dental practice by Unqualified Persons (1959:207

Resolved, that the efforts of untrained and unqualified persons to gain a limited or unqualified right to serve the public directly in the field of dental practice be opposed as detrimental to the health, safety and welfare of the public.

Appendix I-5

APPENDIX M

AMA ENGAGED IN GROUP BOYCOT OF CHIROPRACTORS, VIOLATED Section 1

The American medical Association offended Sherman Act Section 1 by instituting a group boycott of chiropractors in the mid-1960's by informing its members that chiropractors were unscientific practitioners and that it was unethical for a physician to associate with a chiropractor, the U.S. District Court for the Northern District of Illinois decides. (Wilk v. American Medical Ass'n. No. 76 C 377, ND Ill., 8/27/87) [Text of opinion appears in Text Section]

Background

In 1976, the plaintiff chiropractors filed a complaint accusing several medial associations, including the AMA, of a national conspiracy to eliminate the profession of chiropractic by restraining inter-professional relations between chiropractors and other health professionals. See 787 ATRR A-14. The claim was based principally on Principle 3 of the

AMA's Principles of Medical Ethics, which prohibited medical physicians from associating professionally with unscientific practitioners. According to the plaintiffs, the AMA used Principle 3 to achieve a boycott of chiropractors by first calling chiropractors "unscientific practitioners" and then advising AMA members and other medical societies that it was unethical for medical physicians to associate with chiropractors.

The first trial, held in 1981, resulted in a jury verdict for the defendants. See 1002 ATRR A-6. The Seventh Circuit reversed and remanded the case for a new trial. See Wilk v. AMA, 719 F.2d 207 (CA7 1983). The Wilk court held that the challenged conduct was to be judged under the rule of reason, that the relevant inquiry was whether the challenged agreement is one that promotes competition or one that suppresses competition, and that the defendants could raise a "patient care defense" if the plaintiffs were able to

show that the agreement restricted competition. This defense allowed the defendants to show:

(1) that they genuinely entertained a concern for what they perceive as scientific method in the care of each person with whom they have entered into a doctor-patient relationship: (2) that this concern is objectively reasonable; (3) that this concern has been the dominant motivating factor in defendants' promulgation of Principle 3 and in the conduct intended to implement it; and (4) that this concern for scientific method in patient care could not have been adequately satisfied in a manner less restrictive of competition. On remand, the plaintiffs waived their claim for damages and sought only injunctive relief. The case thus was tried to the bench rather than a jury.

New Zealand Report

Judge Getzendanner decides that the plaintiffs

are entitled to injunctive relief against the AMA and two other defendants – the American College of Surgeons (ACS) AND THE American College of Radiology (ACR) – but not against the other defendants – the American Academy of Orthopedic Surgeons (AAOS), the American College of Physicians (ACP), AMA official James E. Sammons, M.D., and the Joint Commission on Accreditation of Hospitals (JCAH).

The court reaches its conclusion without relying on a report from a New Zealand governmental task force concluding that chiropractic is a valid health care profession. With one narrow exception, the court excludes the report on the ground that its conclusions are not trustworthy because they are not based on well-designed or controlled clinical trials. The exception is to admit the report to show information on chiropractic in the latter half of 1979 when it was issued. The

the latter half of 1979 when it was issued. The court adds, however, that such evidence "is not ***especially probative."

The report was written three years after this suit was filed, the court explains, so its only possible relevance is with respect to the charge that the alleged violation was a continuing one. The report thus may come in to show that the defendants may have suspected that their public position on chiropractic was untenable. It may not come in to show that the pubic stand was objectively unreasonable.

Liability

On the liability question, the court outlines evidence of the AMA's boycott activity from the formation in 1963 of a committee to eliminate chiropractic to 1981 when Principle 3 was eliminated. During this time, the AMA adopted a

resolution calling chiropractic an unscientific cult and established a committee to spread the boycott to other medical professions.

The court is not persuaded that the AMA changed its position on chiropractic in July 1979 by issuing a new report purportedly recognizing the development of chiropractic as a valid health care service. In the court's view, the report "was obviously written by lawyers in an effort to bring the AMA into compliance with the antitrust laws, and not a bold change of position designed to reverse the attitudes of the AMA members formed, at least in part, by the then eleven year old boycott."

Applying a rule of reason analysis, the court finds that the boycott constituted an unreasonable restrain of trade violative of Section 1. The AMA's intent was to eliminate the entire profession of chiropractic and the market power of its members was substantial. Therefore, "a substantial adverse

effect on competition is evident. Indeed, the anticompetitive effects generally were conceded by the AMA and its expert – William J. Lynk of Lexecon Inc. While Lynk did not concede the existence of a boycott, he admitted that the anticompetitive effects, such as an increase in costs, would flow from any such boycott.

Lynk maintained that there were pro-competitive effects in which the boycott constituted nonverbal communication which informed consumers about the differences between medical physicians and chiropractors, a position the court finds to be a "speculative" opinion.

Adding injury, the court finds that the plaintiffs proved both injury to their incomes and injury to their reputations. The plaintiffs' economic expert –Dr. Mirontano—compared the income of chiropractors, podiatrists, and optometrists over the relevant period of time and concluded that the

income of chiropractors was lower than that of the other, comparable limited licensed practitioners. This evidence was bolstered by "the very strong evidence of a pervasive, nationwide, effective conspiracy which by its very nature would have affected the demand curve for chiropractic services and adversely affected income of chiropractors."

Patient Care Defense

Turning to the patient care defense, the court finds that the AMA established the element of showing that it was genuinely concerned about the use of the scientific method in the care of patients.

The AMA, however, failed to meet its burden of showing that its concern for the scientific method "was objectively reasonable throughout the entire period of the boycott." At the same time, the court declines the plaintiffs' invitation to go further and

hold that chiropractic "is a valid, efficacious, even scientific health care service." Such a conclusion can only be based on well designed, controlled study, the court explains, and no such study exists.

The AMA also failed to show that this concern for scientific method in patient care could not have been attained in a manner less restrictive of competition, the court holds. "It would be a difficult task to persuade a court that a boycott and conspiracy designed to contain and eliminate a profession that was licensed in all fifty states at the time when the [AMA's] Committee on Quackery disbanded was the only way to satisfy the AMA's concern for the use of scientific method in patient care."

Injunctive Relief

The AMA fails to persuade the court that an injunction is not necessary in this case because it

has changed its policies.

Judge Getzendanner explains: "There are lingering effects of the conspiracy: the AMA has never acknowledge the lawlessness of its past conduct and in fact to this day maintains that it has always been in compliance with the antitrust laws: there has never been an affirmative statement by the AMA that it is ethical to associate with chiropractors; there has never been a public statement by the AMA to members of the admissions made in this court about the improved nature of chiropractic despite the fact that the AMA today claims that it made changes in its policy in recognition of the change and improvement in chiropractic; there has never been public retraction of articles such as "The right and Duty of Hospitals to Deny Chiropractor Access to hospitals; a medical physician has to very carefully read the current AMA Judicial

Council Opinions to realize that there has been a change in the treatment of chiropractors and the court cannot assume that elements of the AMA pore over these opinions; and really, the systematic, long-term wrongdoing and the long-term intent to destroy a licensed profession suggests that an injunction is appropriate in this case. When all of these factors are considered in the context of this private attorney general' antitrust suit, a proper exercise of the court's discretion permits, and in my judgment requires, an injunction."

The court directs the plaintiffs to prepare a proposed injunction consistent with this opinion.

Other Defendants

JCAH and ACP are exonerated by the court on the ground that their actions were taken independently of the AMA boycott and were not undertaken pursuant to the conspiracy.

While the court concludes that AAOS participated in the conspiracy and cannot establish the patient care defense, it finds that an injunction should not issue against AAOS because the evidence suggests that "there is no likelihood that AAOS would renew any boycott or conspiracy against chiropractors."

As to ACS, the evidence shows that it was a member of the conspiracy and that its actions were not independent of the AMA boycott. The court is persuaded that an injunction is necessary although the conduct of ACS was "less egregious" than that of the AMA. "ACS has never informed its members that the boycott is over and that its ban on association with chiropractors was wrong and has been lifted. The boycott has lingering effects. It is likely that ACS would again engage in similar boycott activities if presented with the opportunity."

ACR, the court finds, participated in the AMA conspiracy and in a separate conspiracy with its members that was not the least restrictive means of achieving ACR's legitimate patient care goals. Therefore, it holds, ACR failed to establish the patient care defense.

Appendix M-1

THE AMERICAN MEDICAL ASSOCIATION FOUND GUILTY OF CONSPIRACY

United States Court of Appeals – February 7, 1990

United States District Court – August 27, 1987

AMA FOUND GUILTY

SUMMARY

THE AMA HAS BEEN FOUND GUILTY OF AN ILLEGAL CONSPIRACY TO DESTROY THE COMPETITIVE PROFESSION OF CHIROPRACTIC, THE MEMBERS OF WHICH WERE FOUND TO "OUTPERFORM" MEDICAL PHYSICIANS IN CERTAIN SEGMENTS OF THE HEALTH CARE MARKET. THE QUOTATIONS HEREIN ARE FROM THE OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT WHICH WAS ISSUED ON FEBRUARY 7, 1990

Wilk et al v. AMA et al

Critical Quotes from Appeals Court Decision

I. pervasiveness of the AMA's illegal conspiracy to destroy the profession of chiropractic

After a lengthy bench trial, the district court concluded that the AMA, through former Principle 3, had unreasonably restrained trade in violation of Section 1 of the Sherman Act.

The district court's form of injunction and method of ensuring its publication (and thus its efficacy) was a reasonable attempt at eliminating the consequences of the AMA's lengthy, systematic, successful, and unlawful boycott.

The district court found the AMA's purpose in all of this was to prevent medical physicians from referring patients to chiropractors and from accepting referrals of patients from chiropractors, so as to prevent chiropractors from obtaining access to hospital diagnostic services and membership on the

hospital medical staffs, to prevent medical physicians from teaching at chiropractic colleges or engaging in any joint research, and to prevent any cooperation between the two groups in the delivery of health care services.

Subsequent AMA action, id. at 1473-74, made clear the ethical bar on professional association (which included prohibiting medical physicians from referring patients to chiropractors and from receiving referrals from chiropractors; providing diagnostic, laboratory, or radiology services for chiropractors; and from teaching chiropractors, or practicing together in any manner). The AMA widely circulated these documents.

Finally, in 1973, the AMA drafted "Standard X," which incorporated the unscientific practitioners" ethical bar into the JCAH accrediting standards. At the AMA's urging, JCAH adopted Standard X.

Here, the district court found the relevant market to

be the provision of health care services to the American public nationwide, particularly care for the treatment of musculoskeletal problems, 671 F. Supp at 1478. Several facts demonstrated the AMA's market power within the health care services market.

Here, the district court found the AMA membership was a substantial force in the American health care market, and that there was substantial barriers to the entry of new chiropractors into the field, such as substantial education requirements, 671 F.Supp. at 1479.

In the district court's view, further support for plaintiffs' theory of harm was the "very strong evidence of pervasive, nationwide, effective conspiracy which by its very nature would have affected the demand curve for chiropractic services and adversely affected the income of chiropractors."

II. Harm to the Public from the AMA's Illegal

Conspiracy to Destroy The Profession of Chiropractic

The district court found the AMA's purpose in all of this was to prevent medical physicians from referring patients to chiropractors and from accepting referrals of patients from chiropractors, so as to prevent chiropractors from obtaining access to hospital diagnostic services and membership on hospital medical staffs, to prevent medical physicians from teaching at chiropractic colleges or engaging in any joint research, and to prevent any cooperation between the two groups in the delivery of health care services.

The court, however, found that the AMA failed to carry its burden of persuasion as to whether its concern for scientific method in patient care was objectively reasonable.

But, according to the court (and this is unchallenged), at the same time, there was evidence before the Committee that chiropractic was effective,

indeed more effective than the medical profession, in treating certain kinds of problems, such as back injuries. The Committee was also aware, the court found, that some medical physicians believed chiropractic could be effective and that chiropractors were better trained to deal with musculoskeletal problems than most medical physicians.

Anticipating this negative (for it) result, the AMA makes a last-ditch perfunctory argument. It attacks the injunction, arguing that it is unnecessarily overbroad, purports to award class-wide relief in a case that was never certified as a class action, and "implicate[s] the AMA's rights under the First Amendment." None of these arguments are convincing.

True enough, as the AMA observes, an injunction in a private antitrust suit should award a plaintiff injunctive relief "only to the extent necessary to protect it from future damage likely to occur if the

defendant continues the unlawful antitrust conduct." Ohio-Sealey Mattress Manufacturing Co. v. Sealey, Inc., 669 F.2d 490, 495 (7th Cir. 1982). But beyond this general principle, the AMA does not make any genuine argument that the injunction is overbroad. Instead, it simply asserts that the primary beneficiaries of the district court's order, insofar as it requires the order to be mailed to every AMA member, that it be published in the Journal of the American Medical Association, and that the AMA revise a national ethical publication, are the some 30,000 chiropractors in the nation as a whole who were not parties to this case. Doubtless, these other chiropractors may benefit from the mass mailing and publication required by the district court's order. But this does not necessarily make the injunction overbroad.

The AMA suggestion that the publications and mailings should have been limited to the four

communities in which the individual plaintiffs practiced unnecessarily limits the relief, and ignores the public interest served by private antitrust suits. Such suits can effectively open competition to a market that was previously closed by illegal restraints.

Relief here is provided not only to the plaintiff chiropractors, but also in a sense to all consumers of health care services. Ensuring that medical physicians and hospitals are free to professionally associate with chiropractors (e.g., by the publication and mailing of the order to AMA members), likely will eliminate such anti-competitive effects of the boycott as interfering with consumers' free choice in choosing a product (health care provider) of their liking. In this way competition is served by the injunction. In short, the injunction, as designed by Judge Getzendanner, reasonably attempts to eliminate the consequences of the AMA's boycott

eliminate the consequences of the AMA's boycott, and we will not disturb it. National Society of Professional Engineers, 435 U.S. at 698.

Finally, we reject the AMA's hint ("argument" seems to generous when the AMA's claim comprises but one paragraph of a 77-page brief, Max M. v. New Trier High School District No. 203, 859 F.2d 1297, 1300 (7th Cir. 1988)) that the district court's order somehow infringes on the AMA's First Amendment rights. We think the injunction as written is sufficiently tailored to avoid constitutional objection. As the Supreme Court has stated:

[while the resulting order may curtail the exercise of liberties that the [defendants] might enjoy, that is a necessary and, in cases such as this, unavoidable consequence of the violation... The First Amendment does not 'make it ...impossible ever to enforce laws against agreements in restraint of trade...' Giboney v. Empire Storage and Ice Co., 336 U.S. 490, 502. In

fashioning a remedy, the District Court may, of course, consider the fact that its injunction may impinge upon rights that would otherwise be constitutionally protected, but those protections do not prevent it from remedying the antitrust violations.

National Society of Professional Engineers at 697-98. That the injunction requires the AMA to publicize and mail copies of the order to AMA members, among other things, does not render it unconstitutional. The district court's form of injunction and method of ensuring its publication (and thus its efficacy) was a reasonable attempt at eliminating the consequences of the AMA's lengthy, systematic, successful, and unlawful boycott.

III. Harm to the Profession of Chiropractic and Individual Doctors of Chiropractic Resulting From the AMA's Illegal Conspiracy to Destroy the Profession of Chiropractic.

The district court found the AMA's purpose in all of this was to prevent medical physicians from referring patients to chiropractors and from accepting referrals of patients from chiropractors, so as to prevent chiropractors from obtaining access to hospital diagnostic services and membership on hospital medical staffs, to prevent medical physicians from teaching at chiropractic colleges or engaging in any joint research, and to prevent any cooperation between the two groups in the delivery of health care services.

Yet another factor supporting an injunction is what the district court termed the boycott's "lingering effects." The court found not only that plaintiffs had been personally harmed by the boycott, but that they continued to be personally harmed and threatened by a lack of association with members of the AMA as a result of the boycott and its lingering effects.

The district court also found a continuing injury to

chiropractors' reputations as a result of the boycott. Because the AMA has never made any attempt to publicly repair that damage, the court found that chiropractors will continue to suffer injury to reputation from the boycott.

But even without the lingering effects on chiropractors' in come, there still remain the effects on professional association and reputation, which by themselves may be sufficient to show continuing harm from the boycott

Anticipating this negative (for it) result, the AMA makes a last-ditch perfunctory argument. It attacks the injunction arguing that it is unnecessarily overbroad, purports to award class-wide relief in a case that was never certified as a class action, and "implicate[s] the AMA's rights under the First Amendment." None of these arguments are convincing.

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a private antitrust suit should award a plaintiff injunctive relief "only to the extent necessary to protect it from future damage likely to occur if the defendant continues the unlawful antitrust conduct." Ohio-Sealey Mattress Manufacturing Co. v. Sealey, Inc., 669 F.2d 490, 495 (7th Cir. 1982). But beyond this general principle, the AMA does not make any genuine argument that the injunction is overbroad. Instead, it simply asserts that the primary beneficiaries of the district court's order, insofar as it requires the order to be mailed to every AMA member, that it be published in the Journal of the American Medical Association, and that the AMA revise a national ethical publication, are the some 30,000 chiropractors in the nation as a whole who were not parties to this case. Doubtless, these other chiropractors may benefit from the mass mailing and publication required by the district court's order. But this does not necessarily make the injunction

overbroad.

The AMA's suggestion that the publications and mailings should have been limited to the four communities in which the individual plaintiffs practice unnecessarily limits the relief, and ignores the public interest served by private antitrust suits. Such suits can effectively open competition to a market that was previously closed by illegal restraints.

Finally, we reject the AMA's hint ("argument seems too generous when the AMA's claim comprises but one paragraph of a 77-page brief, max M. V. New Trier High School District No. 203, 859 F.2d 1297, 1300 (7th Cir. 1988)) that the district court's order somehow infringes on the AMA's First Amendment rights. We think the injunction as written is sufficiently tailored to avoid constitutional objection. As the Supreme Court has stated:

[w]hile the resulting order may curtail the exercise of liberties that the [defendants] might enjoy, that is a

necessary and, in cases such as this, unavoidable consequence of the violation...The first Amendment dos not 'make it...impossible ever to enforce laws against agreements in restrain of trade...' Giboney v. Empire Storage and Ice Co., 336 U.S. 490, 502. In fashioning a remedy, the District Court may, of course, consider the fact that its injunction may impinge upon rights that would otherwise be constitutionally protected, but those protections do not prevent it from remedying the antitrust violations.

IV. court's Belief That the AMA Cannot Be Trusted to Obey the Law and That An Injunction is Necessary.

The AMA settled three antitrust lawsuits in 1978, 1980, and 1986 brought by chiropractors, stipulating and agreeing that under the Judicial Council's current opinions, a medical physician could, without fear of discipline or sanction by the AMA, refer a

patient to a licensed chiropractor when the physician believed that such a referral would benefit the patient. Similarly, physicians could also choose to accept or decline patients sent to them by chiropractors. The AMA also confirmed that physicians could teach at chiropractic colleges or seminars.

The AMA's present position regarding chiropractic is that it is ethical for a medical physician to professionally associate with chiropractors, if the physician believes that the association is in his patient's best interests. The district court found that the AMA had not previously communicated this position to its membership.

Based on these findings, the court held that the AMA and its members violated Section 1 of the Sherman Act by unlawfully conspiring to restrain trade. According to the court, the AMA's boycott purpose had been to eliminate chiropractic; the boycott had

substantial anticompetitive effects: the boycott had no counterbalancing procompetitve effects; and the AMA's unlawful conduct injured the plaintiffs. Further, the AMA never affirmatively acknowledge that there are no impediments to professional association and cooperation between chiropractors and medical physicians, except as provided by law. The district court believed it was important that the AMA make its members aware of the present AMA position (i.e. it is ethical for medical physicians to professionally associate with chiropractors, if the physician believes it is in the patient's best interest) to eliminate the illegal boycott's lingering effects, and ordered an injunction designed to accomplish that result.

The trial court concluded there were lingering effects of the AMA's conspiracy; that the AMA never acknowledge the lawlessness of its past conduct, and in fact continued to maintain that it had always been

in compliance with the antitrust laws; that the AMA had never affirmatively stated that it was ethical for medical physicians to professionally associate with chiropractors; that the AMA had never publicly stated to its members the admissions made in the trial court about chiropractic's improved nature, despite the fact that the AMA currently claims that it made changes in its policy in recognition of chiropractic's change and improvement.

The court believed that it was important to make AMA members aware of the AMA's present position – that it is ethical for medical physicians to professionally associate with chiropractors, if the physician believes it is in his patient's best interest – to eliminate the unlawful boycott's lingering effects. The injunction, then, is to "assure that the AMA does not interfere with the right of a physician, hospital or other institution to make an individual decision on the question of professional association.

But no matter which party bore the burden on this issue, the district court's ultimate findings leave no doubt that injunctive relief was appropriate.

We believe the court's decision was reasonable. It found a cognizable danger of recurrent violations, was unimpressed with the AMA's expressed intent to comply with antitrust laws, was un-persuaded by the effectiveness of the AMA's discontinuance of its boycott, and properly considered the systematic and long-term nature of the boycott. W.T. Grant, 345 U.S. at 633.

However, after an outcry from its membership the AMA was forced to change its original position to satisfy its constituents, namely, medical physicians; it thus sought to have JCAH approve a more restrictive accreditation standard which would ensure medical and osteopathic physicians control of the medical staff and patient care in hospitals. That, coupled with the fact that the district court

found the AMA even through the date of trial continued to respond to requests for information on chiropractic by sending out anti-chiropractic literature, id., was enough for the district court properly to conclude that there was evidence that suggests a possible return to the AMA's former policies.

The district court could properly be skeptical of the AMA's "protestations of repentance and reform," Oregon State Medical Society, 343 U.S. at 333, especially since the AMA's change of position occurred not too long after this suit was filed in 1976. Importantly, the district court found that even as of the trial date, the AMA continued to respond to request for information on chiropractic by sending outdated anti-chiropractic literature.

Finally, we reject the AMA's hint ("argument" seems to generous when the AMA's claim comprises but one paragraph of a 77 page brief, Max M. v. New Trier

High School District No. 203, 859 F.2d 1297, 1300 (7th Cir. 1988)) that the district court's order somehow infringes on the AMA's First Amendment rights. We think the injunction as written is sufficiently tailored to avoid constitutional objection. As the Supreme Court has stated:

[w]hile the resulting order may curtail the exercise of liberties that the [defendants] might enjoy, that is a necessary and, in cases such as this, unavoidable consequence of the violation... The First Amendment does not 'make it ... impossible ever to enforce laws against agreements in restraint of trade....' Giboney v. Empire Storage and Ice Co., 336 U.S. 940, 502. In fashioning a remedy, the District Court may, of course, consider the fact that its injunction may impinge upon rights that would otherwise be constitutionally protected, but those protections do not prevent it from remedying the antitrust violations.

National Society of Professional Engineers at 697-98. That the injunction requires the AMA to publicize andmail copies of the order to AMA members, among other things, does not render it unconstitutional. The district court's form of injunction and method of ensuring its publication (and thus its efficacy) was a reasonable attempt at eliminating the consequences of the AMA's lengthy, systematic, successful, and unlawful boycott.

In the

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Nos. 8702672 & 82-2777

Dr. Chester A. Wilk, D.C.

Dr. James W. Bryden, D.C.

Dr. Patricia B. Arthur, D.C., and

Dr. Michael D. Pedigo, D.C.

Plaintiffs-Appellees,

Cross-Appellants,

v.

American Medical Association

Defendant-Appellant,

Cross-Appelle

Dr. Chester A. Wilk, D.C.,

Dr. James W. Bryden, D.C.,

Dr. Patricia B. Arthur, D.C., and

Dr. Michael B. Pedigo, D.C.,

Plaintiffs-Cross Appellants

American Medical Association

Joint Commission on Accreditation,

Of Hospitals, American College

Of Physicians an American Academy

Of Orthopaedic Surgeons,

Defendants-Cross-Appellees.

Appeal from the United States District court

For the Northern District of Illinois, Easter Division.

No. 76 C 377—Susan Getzendanner, Judge.

Argued December 1, 1988 -- Decided February, 1990

Before Wood, Jr., Ripple, and Manion, Circuit Judges

Manion, Circuit Judge. The district court held that the American Medical Asociation ("AMA") VIOLATED Section 1 of the Sherman Act, 15 U.S.C. Section 1, by conducting an illegal boycott in restraint of trade directed at chiropractors generally, and the four plaintiffs in particular. The court granted an injunction under Section 16 of the

Clayton Act, 15 U.S.C. Section 26, requiring, among other things, wide publication of its order. The court held that two additional defendants, the Joint Commission on Accreditation of Hospitals ("JCAH"), and the American College of Physicians ("ACP"), had acted independently of the AMA's boycott, and dismissed them from the case. Wilk v. American Medical Association, 671 F.Supp. 1465 (N.D. Ill. 1987). The AMA appeals the finding of liability, and contends that, in any event, injunctive relief is unnecessary. Plaintiffs cross-appeal against JCAH and ACP. We affirm.

I.

We have observed before that "antitrust cases are notoriously extended." Ball Memorial Hospital Inc. v. Mutual Hospital Insurance Inc., 784 F.2d 1325, 1333 (7th Cir. 1986). This case is no exception. Plaintiffs Chester A. Wilk, James W. Bryden, Patricia B. Arthur, and Michael D. Pedigo, are licensed

chiropractors. Their complaint, originally filed in 1976, charged several defendants with violations Sections 1 and 2 of the Sherman Act, 15 U.S.C. Sections 1 and 2. It sought both damages and an injunction. (For a list of all the original defendants, see 671 F.Supp. at 1469-70. We discuss here only those relevant to this appeal.) At the first trial, plaintiffs' primary claim was that the defendants engaged in a conspiracy to eliminate the chiropractic profession by refusing to deal with plaintiffs and other chiropractors. Defendants accomplished this, plaintiffs claimed, by using former Principle 3 of the AMA's Principles of Medical Ethics, which prohibited medical physicians from associating professionally with unscientific practitioners. Plaintiffs contended that the AMA used Principle 3 to boycott chiropractors by labeling them "unscientific practitioners," and then advising its members, among others, that it was unethical for medical

physicians to associate with chiropractors. According to the plaintiffs, the other defendants joined the AMA boycott.

A jury returned a verdict for the defendants. An earlier panel of this court, however, reversed that judgment. Wilk v. American Medical Association, 719 F.2d 207 (7th Cir. 1983) (Wilk I). In reversing and ordering a new trial, we held that, in applying the rule of reason, the jury had been allowed to consider factors beyond the effect of the AMA's conduct on competition. The district court had improperly failed to confine the jury's consideration to the "patient care motive as contrasted with [the] generalized public interest motive." Id. at 229.

Just before the 1987 retrial, plaintiffs abandoned their damages claim and sought only injunctive relief. This shifted the case' focus from the past to the present regarding whether plaintiffs were entitled to an injunction under Section 16 of the

Clayton Act. After a lengthy bench trial, the district court concluded that the AMA, through former Principle 3, had unreasonably restrained trade in violation of Section 1 of the Sherman Act. Because the district court adequately detailed the rather lengthy and complex facts of this case, we only briefly summarized them here. (The facts relevant to the claims against JCAH and ACP are set out in section IV o f this opinion regarding plaintiffs' cross-appeal.)

In 1963, the AMA formed its Committee on Quackery ("Committee"). The Committee worked diligently to eliminate chiropractic. A primary method to achieve this goal was to make it unethical for medical physicians to professionally associate with chiropractors. Under former Principle 3, it was unethical for medical physicians to associate with "unscientific practitioners." In 1966, the AMA's House of Delegates passed a resolution labeling

chiropractic an unscientific cult.

The district court found the AMA's purpose in all of this was to prevent medical physicians from referring patients to chiropractors and from accepting referrals of patients from chiropractors, so as to prevent chiropractors from obtaining access to hospital diagnostic services and membership on hospital medical staffs, to prevent medical physicians from teaching at chiropractic colleges or engaging in any joint research, and to prevent any cooperation between the two groups in the delivery of health care services. Despite the Committee's efforts, chiropractic ultimately became licensed in all 50 states.

In 1977, the AMA's Judicial Council (now known as the Council on Judicial and Ethical Affairs, although we will use its previous name, as did the district court) adopted new opinions which permitted medical physicians to refer patients to chiropractors,

as long as the physicians were confident that the services would be performed according to accepted scientific standards. In 1979, the AMA's House of Delegates begrudgingly adopted Report UU, stating that some things chiropractors did were not without therapeutic value; but even so, it stopped short of saying that these services were based on scientific standards. In 1980, the AMA revised its Principles of Medical Ethics, eliminating Principle 3. With this gesture, the district court found, the AMA's boycott ended. 671 F.Supp. at 1477. (We discuss plaintiffs' contention that the boycott continued until 1983 in the section addressing their cross-appeal against JCAH.)

At trial, the AMA raised the so-called "patient care defense" which this court had formulated in its earlier opinion in this case. Wilk I, 719 F.2d at 227. That defense required the AMA generally to show that it acted because of a genuine, and reasonable,

concern for scientific method in patient care and that it could not adequately satisfy this concern in a way that was less restrictive of competition. The district court rejected the defense. The court found the AMA failed to establish that throughout the relevant period (1966-1980) their concern for scientific methods in patient care had been objectively reasonable. The court also found the AMA similarly failed to show it could not adequately have satisfied its concern for scientific method in patient care in a manner less restrictive of competition than a nationwide conspiracy to eliminate a licensed profession. 671 F.Supp. at 1481-84.

The AMA settled three antitrust lawsuits in 1978, 1980, and 1986 brought by chiropractors, stipulating and agreeing that under the Judicial Council's current opinions, a medical physician could, without fear of discipline or sanction by the AMA, refer a patient to a licensed chiropractor when the physician

believed that such a referral would benefit the patient. Similarly, physicians could also choose to accept or decline patients sent to them by chiropractors. The AMA also confirmed that physicians could teach at chiropractic colleges or seminars.

The AMA's present position regarding chiropractic is that it is ethical for a medical physician to professionally associate with chiropractors, if the physician believes that the association is in his patient's best interests. The district court found that the AMA had not previously communicated this position to its membership.

Based on these findings, the court held that the AMA and its members violated Section 1 of the Sherman Act by unlawfully conspiring to restrain trade. According to the court, the AMA's boycotts purpose had been to eliminate chiropractic; the boycott had substantial anticompetitive effects, the boycott had

no counterbalancing pro-competitive effects; and the AMA's unlawful conduct injured the plaintiffs. Despite the fact that the district court found the conspiracy ended in 1980, it concluded that the illegal boycott's "lingering effects" still threatened plaintiffs with current injury and ordered injunctive relief. The court concluded that the boycott caused injury to chiropractors' reputations which had not been repaired, and current economic injury to chiropractors. Further, the AMA never affirmatively acknowledged that there are no impediments to professional association and cooperation between chiropractors and medical physicians, except as provided by law. Thus, chiropractors continued to suffer because the boycott's negative effects (namely, inhibiting AMA members' individual decision making in their relationships with chiropractors) still remained. The district court believed it was important that the AMA make its members aware of

the present AMA position (i.e., it is ethical for medical physicians to professionally associate with chiropractors, if the physician believes it is in the patient's best interest) to eliminate the illegal boycott's lingering effects, and ordered an injunction designed to accomplish that result.

II.

A. Noerr-Pennington Doctrine

The AMA complains that the district court relied almost entirely on AMA conduct that was protected under the Noerr-Pennington doctrine in finding that it illegally conspired to restrain trade. Eastern Railroad Presidents' Conference v. Noerr Motor Freight Inc., 365 U.S. 127 (1961); United Mineworkers v. Pennington, 381 U.S. 657 (1965). See also California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972). The Noerr-Pennington doctrine protects business and other associations when they join to petition legislative

bodies, administrative agencies, or courts for actions having anticompetitive consequences. Id. See also Wilk I, 719 F.2d at 229. The doctrine does not, however, protect purely private action, not genuinely aimed at prompting governmental action. See Allied Tube and Conduit Corp v. Indianhead, Inc. 486 U.S. 492 (1988).

The AMA contends that its statements regarding chiropractors were either statements about chiropractic's deficiencies or bona fide opinions on matters of public interest. The district court acknowledge the AMA's claim and, to the extent that the Committee's work regarding influencing legislation on the state and federal levels or in informational activities to inform the public on the nature of chiropractic was involved, it did not consider such conduct in reaching its decision. Wilk, 671 F. Supp at 1473 n.2. But apart from the protected activity, the district court found

protected activity, the district court found substantial evidence of acts aimed at achieving the boycott's goals, not legislative action. Id. at 1473-77. The court found that the AMA, through a resolution recommended by its Board of Trustees, and adopted by its House of Delegates, branded chiropractic "an unscientific cult." 671 F.Supp. at 1473. This implicitly invoked Principle 3's ethical proscription on professional association with chiropractors. Subsequent AMA action, id. at 1473-74, made clear the ethical bar on professional association (which included prohibiting medical physicians from referring patients to chiropractors, and from receiving referrals from chiropractors; providing diagnostic, laboratory, or radiology services for chiropractors; and from teaching chiropractors, or practicing together in any manner). The AMA widely circulated these documents. The court also found the Committee had regularly communicated with

medical boards and associations, informing them that professional association between medical physicians and chiropractors was unethical. 671 F.Supp. at 1473.

We disagree with the AMA that the district court "repeatedly cite[d]" AMA documents which Z"focus[ed] entirely on the AMA's vigorous educational program' and on 'the necessity to move aggressively against chiropractic in the state legislatures.'" One such document the AMA points to is an internal AMA memorandum (PX 464, Jr. App. 776-77) from the Committee to the Board of Trustees, discussing the AMA's goal of "the containment of chiropractic and, ultimately the elimination of chiropractic." It expressly disavows any intention of using the document publicly. And while the document details some activity that was likely protected, it suggests that activity may have been done only "to minimize the chiropractic

argument that the [AMA's] campaign is simply one of economics..." (Jt. App. 777). Also falling outside of the Noerr-Pennington doctrine's protection is an AMA Judicial Council opinion, holding that it was unethical for medical physicians to professionally associate with chiropractors, which was circulated to AMA members and to 56 medical specialty boards (ZJt. App. 801-03). Finally, in 1973, the AMA drafted "Standard X," which incorporated the unscientific practitioners' ethical bar into the JCAH accrediting standards. At the AMA's urging, JCAH adopted Standard X.

These activities were not aimed at obtaining legislative action. They were instead aimed at medical physicians and hospitals, cautioning them that it was unethical and indeed dangerous (the obvious inference from receiving health care from an unscientific cult) to associate professionally with chiropractors. In the face of the district court's

specific findings on this issue, we cannot say it erred in relying on these activities.

B. Unreasonable Restraint of Trade

The central question in this case is whether the AMA's boycott constituted an unreasonable restraint of trade under Section 1 of the Sherman Act. A restraint is unreasonable if it falls within the category of restraints held to be per se unreasonable, or if it violates what is known as the "ZRule of Reason." Federal Trade Commission v. Indiana Federation of Dentists, 476 U.S. 447, 457-58 (1986); NCAA V. Board of Regents of the University of Oklahoma, 468 U.S. 85, 103 (1984); National Society of Professional Engineers v. United States, 435 U.S. 679, 692 (1978). Restraints that are per se unreasonable include agreements whose nature and necessary effect are so plainly anticompetitive that no elaborate study of the industry or restraint is needed to establish their illegality. Nat'l Society of

Professional Engineers, 435 U.S. at 692. Concerted refusals to deal described as group boycotts, typically are held unlawful per se. See Indiana Federation of Dentists, 476 U.S. at 458; Consolidated Metal Products, Inc. v. American Petroleum Institute, 846 F. 2d 284, 290 (5th Cir. 1988). The per se rule avoids a burdensome inquiry into actual market conditions where the likelihood of anti-competitive effect is so obvious that the costs of determining whether the particular restraint at issue involves anticompetitive conduct is unwarranted. Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2, 15-16 n. 25 (1984). In contrast, the rule of reason category includes agreements whose competitive effect can only be evaluated by analyzing the facts peculiar to the business involved, the particular restraint's history, and the reasons it was imposed. Nat'l Society of Professional Engineers, 435 U.S. at 692. The test of legality under the rule of reason is whether the

challenged conduct promotes or suppresses competition. Id. at 691; see also Chicago Board of Trade v. United States, 246 U.S. 231, 238 (1918). The purpose of both approaches (per se or rule of reason) is to decide the restraint's competitive significance. The Supreme Court historically has been slow to condemn rules adopted by professional association as unreasonable per se. Indiana Federation of Dentists, 476 U.S. at 458. The Court is also reluctant to extend the per se rule to restraints imposed in the context of business relationships where a practice's economic impact is not immediately apparent. Id. Likewise, judicial inexperience with a particular arrangement cautions against extending the per se approach's reach insofar as judging the alleged restraint's lawfulness under the antitrust laws. NCAA v. Board of Regents, 468 U.S. at 100 n.21; see also Northwest Wholesale Stationers, Inc. v. Pacific Stationery and Printing Co. 472 U.S. 284, 294 (1985); Arizona v.

Maricopa County Medical Society, 457 U.S. 332, 344 (1982); Consolidated Metal Products, 846 F.2d at 290. Nevertheless, the Supreme Court has not refrained from applying the per se approach solely on the grounds that the judiciary has little antitrust experience in the particular industry. See Arizona v. Maricopa County Medical Society, 457 U.S. at 349-51 (health care industry).

As a general rule, Section 1 claims under the Sherman Act should be evaluated under the rule of reason unless the challenged action falls into the category of agreements which are deemed so harmful in their effect on competition so as to be conclusively presumed to be unreasonable and thus illegal without a detailed inquiry as to the precise harm they are alleged to have caused. Northwest Wholesale Stationers, 472 U.S. at 289-90; Consolidated Metal Products, 846 F.2d at 289-90 ZIn this court's first go-round with this case, it held that

the AMA's alleged boycott should be measured under the rule of reason. Wilk I, 719 F.2d at 221-22. We held that in the context of a learned profession, the nature and extent of the restraint's anticompetitive effect was too uncertain to warrant per se treatment. Id. at 221. Moreover, we looked to the Supreme Court's decisions involving professional associations (e.g. Arizona v. Maricopa County Medical Society, 457 U.S. 332; Nat'l Society of Professional Engineers, 435 U.S. 679; and Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975)), and noted the pains the Court had taken to carve out the possibility that a practice which might violate the Sherman Act in another context might not violate the Act when a learned profession was involved. Wilk I, 719 F.2d at 222. Thus, we concluded, "[a] canon of medical ethics purporting, surely not frivolously, to address the importance of scientific method gives rise to questions of sufficient delicacy and novelty at least to

escape per se treatment." Id.

On appeal, plaintiffs urge that we change course and apply instead the per se rule. Plaintiffs claim that the Supreme Court's decision in Indiana Federation of Dentists and Northwest Wholesale Stationers undercut our prior decision to treat this case under the rule of reason. But like the district court, we decline plaintiffs' invitation to revisit this issue. The Court in Indiana Federation of Dentists did not itself apply a per se rule. Nor do we read either case as requiring us to employ the per se analysis on the fact of this case. And, in any event, even under the rule of reason, the boycott was unlawful. Cf. Parts and Electric Motors, Inc. v. Sterling Electric, Inc., 826 F.2d 712, 720-21 (7th Cir. 1987) (because jury had concluded that the challenged action – an alleged tying arrangement – had unreasonably restrained competition, and had found liability under the rule of reason, it was unnecessary to decide the case under the per se inquiry).

The threshold issue in any rule of reason case is market power. Schachar v. American Academy of Opthalmology, Inc., 870 F.2d 397, 398 (7th Cir. 1989); Valley Liquors, Inc. v. Renfield Importers Ltd., 822 F.2d 656,666 (7th Cir. 1987) (Valley II). Market power is the ability to raise prices above the competitive level by restricting output. NCAA v. Board of Regents, 468 U.S. at 109 n.38; Ball Memorial Hospital, 784 F.2d at 1331. Whether market power exists in an appropriately defined market is a fact-bound question, and appellate courts normally defer to district court findings on that issue. Jefferson Parish Hospital, 466 U.S. at 42 (O'Connor, J., concurring). Here, the district court found the relevant market to be the provision of health care services to the American public nationwide, particularly care for the treatment of musculoskeletal problems. 671 F.Supp. at 1478. Several facts demonstrated the AMA's market power

within the health care services market. AMA members constituted a substantial force in the provision of health care services in the United States and they constituted a majority of medical physicians. AMA members received a much greater portion of fees paid to medical physicians in the United States than non-AMA members. Id. The evidence showed that AMA members received approximately 50% of all fees paid to health care providers. Finally, according to plaintiffs' expert, the AMA enjoyed substantial market power. The district court also found there was substantial evidence that the boycott adversely affected competition, and that a showing of such adverse effects negated the need to prove in any elaborate fashion market definition and market power, relying on Indiana Federation of Dentists, 476 U.S. at 460-62.

The AMA first contests the district court's finding of market power. It challenges the court's reliance on

market share evidence as a basis to find market power and the district court' lumping together all AMA members as a group in assessing market share as a basis for its market power finding. We are not convinced the trial court erred. The district court properly relied on the AMA membership's substantial market share in finding market power. While we cautioned against relying solely on market share as a basis for inferring market power in Ball Memorial Hospital, 784 F.2d at 666-67. This is especially so where there are barriers to entry and no substitutes from the consumer's perspective. Ball Memorial Hospital, 784 F.2d at 1336. Here the district court found the AMA membership was a substantial force in the American health care market, and that there were substantial barriers to the entry of new chiropractors into the field, such as substantial education requirements. 671 F.Supp. at 1479.

The district court also relied on substantial evidence of adverse effects on competition caused by the boycott to establish the AMA's market power. In Indiana Federation of Dentists, the Supreme Court explained that since "the purpose of the inquiries into market definition and market power is to determine whether an arrangement has the potential for genuine adverse effects on competition, 'proof of actual detrimental effects, such as reduction of output' can obviate the need for an inquiry into market power, which is but a 'surrogate for detrimental effects.'" 476 U.S. at 460-61, quoting 7P. Areeda, Antitrust Law 1511, p.429 (1986). See also, P. Areeda, The Rule of Reason – A catechism on Competition, 55 Antitrust law Journal 571, 577 (1986). Thus, the district court recited the boycott's anticompetitive effects:

> It is anticompetitive and it raises costs to interfere with the consumer's free choice to take the

product of his liking; it is anticompetitive to prevent medical physicians from referring patients to a chiropractor; (Lynk -- 1427-28) it is anticompetitive to impose higher costs on chiropractors by forcing them to pay for their own x-ray equipment rather than obtaining x-rays from hospital radiology department or radiologists in private practice; and it is anticompetitive to prevent chiropractors from improving their education in a professional setting by preventing medical physicians from teaching or lecturing to chiropractors. (Tr. 1409-22, 1424-31.) 671 F.Supp. at 1478-79. See also Wilk I, 719 F.2d at 214. These findings eliminate the need for an inquiry into market power.

The AMA's attempts to discredit the evidence the district court relied on to find anticompetitive effects are unavailing. The record does not show, as the AMA contends, that forcing chiropractors to purchase their own x-ray equipment had no adverse

effect on chiropractors. And the district court did not clearly err in finding that former Principle 3 reduced demand for chiropractic services simply because there was evidence that a patient had seen a chiropractor before and after having seen a medical physician. Moving on, the AMA argues that even if market power existed, it escapes liability under the rule of reason because former Principle 3 had overriding procompetitive effects. The AMA's argument is not unpersuasive in the abstract: but unfortunately it relies on evidence which the district court rejected as "speculative." 671 F.Supp. at 1479. Essentially, the AMA argues that the market for medical services is one where there is "information asymmetry." In other words, health care consumers almost invariably lack sufficient information needed to evaluate the quality of medical services. This increases the risk of fraud and deception on consumers by unscrupulous health care providers

possibly causing what the AMA terms "market failure": consumers avoiding necessary treatment (for fear of fraud), and accepting treatment with no expectation of assured quality. The AMA's conduct, the theory goes, ensured that physicians acquired reputations for quality (in part, by not associating with unscientific cultists), and thus allowed consumers to be assured that physicians would use only scientifically valid treatments. This in effect simultaneously provided consumers with essential information and protected competition.

Getting needed information to the market is a fine goal, but the district court found that the AMA was not motivated solely by such altruistic concerns. Indeed, the court found that the AMA intended to "destroy a competitor," namely, chiropractors. It is not enough to carry the day to argue that competition should be eliminated in the name of public safety. See Nat'l Society of Professional

Engineers, 435 U.S. 679.

But the AMA persists in arguing that pro-competitive effects were achieved by the boycott through what its expert called "nonverbal communication." In rejecting this argument, the district court stated that the AMA's expert's theory is that the boycott constituted nonverbal communication which informed consumers about the differences between medical physicians and chiropractors, and that this had a pro-competitive effect. (Tr. 1411-12.) I reject this opinion as speculative. (TR. 1434-43). Mr. Lynk [William J. Lynk, the AMA's expert] neither conducted nor read any studies regarding the efficacy of such nonverbal communications. Id. He neither conducted nor read any surveys of consumer opinion to determine whether consumers were confused about the differences between medical physicians and chiropractors. (Id.). I saw no evidence of any such

confusion during the trial. Mr. Lynk's opinion does not accord with common sense. A nationwide conspiracy intended by its participants to contain and eliminate a licensed profession cannot be justified on the basis of Mr. Lynk's personal opinion that it was procompetitive, nonverbal communication to consumers.

671 F.Supp. at 1479. We find the district court's reasoning compelling.

The AMA, however, argues that the district court missed the boat in rejecting Mr. Lynk's theory. The relevant question, according to the AMA, is not whether consumers would perceive any differences between physicians and chiropractors today; rather, it is whether they would ever view a physician's referral of a patient to a chiropractor as a physician's endorsement of the chiropractor's practices. But the AMA misses the essence of the district court's ruling. The trial court rejected the AMA's theory as

speculative because Lynk neither conducted nor read any studies regarding nonverbal communications; his view were only his "personal opinion." 671 F.Supp. at 1479. In fact, Lynk testified that an empirical study could not even be performed to determine the pro-competitive effects of Principle 3. (Jt. App. At 351-52.) Thus, even if the AMA is right in asserting that the relevant inquiry is how a physician's referral would be viewed by the consumer, there was no underlying study or data to support its theory.

Moreover, Lynk's testimony did not bear out the AMA's assertions regarding the "relevant question>" The AMA says that it is irrelevant to its theory whether health care consumers perceive any differences between chiropractors and medical physicians, and that SAYS Lynk's testimony went to the role of reputation and information in health care service markets. But in testifying as to the pro-

competitive function of standards generally, Lynk testified that they improve consumer information by making it possible for consumers to make more informed choices "about what it is they are getting from alternative sellers of the same or substitute products to the extent that it allows them to make better choices." (Jt. App. 343.) Lynk also testified that one of the interests served by former Principle 3 was that it would clarify the distinctions between the profession of medicine and alternative professions "that are not based on medical science but which can create the appearance that they are." (Jt. App. 351.) This seems to go precisely to the perceived differences between chiropractors and medical physicians.

In sum, we agree with the district court that the AMA's boycott constituted an unreasonable restraint of trade under Section 1 of the Sherman Act under the rule of reason. Therefore, the district court's

findings that the AMA's boycott was anticompetitive, and was not counter-balanced by any pro-competitive effects were not erroneous. Nat'l Society of Professional Engineers, 435 U.S. at 691.

C. Patient Care Defense

In the AMA's first appeal, we modified the rule of reason to allow the AMA to justify its boycott of chiropractors if it could show that it was motivated by a concern for "patient care." Wilk I, 719 F.2d at 227. We were persuaded that measuring former Principle 3's reasonableness required a more flexible approach than the traditional rule of reason inquiry provided. Id. at 226-27. Thus, we explained that if plaintiffs met their burden of persuasion on remand by showing that former Principle 3 and the implementing conduct had restricted competition rather than promoting it, the burden of persuasion would shift to the defendants to show:

(1) that they genuinely entertained a concern for

> what they perceive as scientific method in the care of each person with whom they have entered into a doctor-patient relationship; (2) that this concern is objectively reasonable; (3) that this concern has been the dominant motivating factor in defendants' promulgation of Principle 3 and in the conduct intended to implement it; and (4) that this concern for scientific method in patient care could not have been adequately satisfied in a manner less restrictive of competition.

Id. at 227.

In this appeal, plaintiffs ask us to reconsider the patient care defense, urging that three subsequent Supreme Court decisions have implicitly rejected; see Patrick v. Burget, 486 U.S. 94, 104-05 (1988); Indiana Federation of Dentists, 476 U.S. at 458-60; and Jefferson Parish Hospital Dist. No. 2, 466 U.S. at 25 n. 41. While these decisions may cast doubt on the patient care defense's continuing vitality, they did

not address the specific issue of whether the patient care defense on the facts in this case would be allowed. While we acknowledge that there has been some academic criticism of the defense (see Kissam, Antitrust Boycott Doctrine, 69 Iowas L. Rev. 1165, 1214-16 (1984); Havighurst, Doctors and Hospitals: An Antitrust Perspective on Traditional Relationships, 1984 Duke L.J. 1071, 1103 n.101 (1984)), we need not revisit the issue because the district court's finding that the AMA did not satisfy its burden of persuasion under the defense was not clearly erroneous.

The district court held that the AMA failed to meet the defense's second and fourth elements: that its concern for scientific method in patient care was objectively reasonable, and that the concern for scientific method in patient care could not have been satisfied adequately in a manner less restrictive of competition, respectively. While only those two

rulings are at issue, it is useful to summarize the district court's treatment of the entire defense. Although doubting the AMA's genuineness regarding its concern for scientific method in patient care, the district court concluded that the AMA established that element. While it was attacking chiropractic as unscientific, the AMA simultaneously was attacking other unscientific methods of disease treatment (e.g., the Krebiozen treatment of cancer), and, as the district court noted, the existence of medical standards or guidelines against unscientific practice was relatively common. 671 F.Supp. at 1481. The court, however, found that the AMA failed to carry its burden of persuasion as to whether its concern for scientific method in patient care was objectively reasonable.

The court acknowledged that during the period that the Committed on Quackery was operating, there was plenty of material supporting the belief that all

chiropractic was unscientific. But, according to the court (and this is unchallenged), at the same time, there was evidence before the Committee that chiropractic was effective, indeed more effective than the medical profession, in treating certain kinds of problems, such as back injuries. The Committee was also aware, the court found, that some medical physicians believed chiropractic could be effective and that chiropractors were better trained to deal with musculoskeletal problems than most medical physicians. Moreover, the AMA's own evidence suggested that at some point during its lengthy boycott, there was no longer an objectively reasonable concern that would support a boycott of the entire chiropractic profession. Also important was the fact that "it was very clear" that the Committee's members did not have open minds to pro-chiropractic arguments or evidence. 671 F.Supp. at 1481,83.

Next, the court found that the AMA met its burden in establishing that its concern about scientific method was the dominant motivating factor for promulgating former Principle 3, and in the conduct undertaken and intended to implement it. 671 F.Supp. at 1483. But even so, the court acknowledge there was evidence showing that the AMA was motivated by economic concerns, as well.

Finally, the court concluded that the AMA failed to meet its burden in demonstrating that it's concern for scientific method in patient care could not have been satisfied adequately in a manner less restrictive of competition. The court stated that the AMA had presented no evidence of other methods of achieving their objectives such as public education or any other less restrictive approach. 671 F.Supp. at 1483.

The AMA attacks the district court's findings as to the second element (concern for scientific method as objectively reasonable), claiming that the court

rewrote the element to require the AMA to show its concern with chiropractic (rather than with scientific patient care) was objectively reasonable. Wil, 671 F.Supp. at 1481. We disagree. The AMA's claim in passing that the court "misconceiv[ed]" the defense is barely explained in one of its 67 footnotes; but in any event, we think the district court was true to the defense and adequately supported its holding with several key factual determinations. It recited the evidence directly at odds with the AMA's belief that all chiropractic was unscientific. 671 F.Supp. at 1481-83. The AMA does not challenge the district court's findings, so those findings must stand. Beyond that, the AMA reads this element to rigidly. The issue here is whether its concern for scientific method in the care of patients was objectively reasonable. In the context of this particular case, then, the question is whether that concern justified a boycott of chiropractic. Based on the undisputed

facts, it did not.

The AMA's challenge to the fourth element (concern for scientific method in patient care could not have been adequately satisfied in a manner less restrictive of competition) is equally unpersuasive. The AMA completely fails to offer any evidence to support its burden. Instead, it argues that its former guideline had at most a deminimis effect on chiropractors' costs, and thus could not be treated as an attempt to contain and eliminate the entire chiropractic profession. This, however, ignores the fact that the AMA's self proclaimed and described "mission" was to contain, and ultimately eliminate chiropractic. (Jt. App. 776.) The AMA participated in a nationwide boycott and conspiracy designed to contain and eliminate a profession that was licensed in all fifty states at the time the Committee on Quackery was disbanded. As the district court held, it is "a difficult task" to argue that this was "the only way to satisfy

the AMA's concern for the use of scientific method in patient care." 671 F.Supp. at 1483. Furthermore, we reject the AMA's attempts to minimize the effect its boycott had on competition. The district court found the boycott had several anticompetitive effects, such as raising costs by interfering with consumers' free choice, which are un-refuted. 671 F.Supp. at 1478-79, 1480.

D. Antitrust Injury

To seek an injunction under Section 16 of the Clayton Act, a private plaintiff must allege "threatened loss or damage 'of the type the antitrust laws were designed to prevent and that flows from that which makes defendants' acts unlawful.'" Cargill Inc. v. Monfort of Colorado Inc., 479 U.S. 104, 113 (1986) (quoting Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489 (1977)). Here, the district court concluded that plaintiffs had shown the kind of injury the antitrust laws were designed to

prevent. 671 F.Supp. at 1479-80. Plaintiff's economic expert (Stano) compared chiropractors' incomes with podiatrists' and optometrists' incomes (comparable limited license practitioners) over the relevant period of time and concluded that chiropractors' incomes had been lower than both. This Styno viewed as consistent with plaintiffs' boycott theory. He also concluded that a jump in chiropractors incomes during the 1978-1980 period was consistent with the acknowledge lessening of the boycott by the AMA during that time. Lynk, the AMA's economic expert, though he faulted the data plaintiffs' expert relied upon, agreed that if he were to compare chiropractors' incomes to comparable groups, he also would include podiatrists and optometrists (although he state he would seek further explanations for differences between the groups' incomes). In the district court's view, further support for plaintiffs' theory of harm was the "very strong evidence of a

pervasive, nationwide, effective conspiracy which by its very nature would have affected the demand curve for chiropractic services and adversely affected the income of chiropractors." 671 F.Supp. at 1480. Finally, the district court added, there was evidence of injury to reputation suffered by chiropractors. (Both economic experts, according to the court, believed that injury to reputation would constitute an anticompetitive effect of the boycott.)

The AMA argues that plaintiffs failed to establish an antitrust injury. Essentially the argument goes somewhat like this. This case is not a class action; rather, it involves only the four named plaintiffs. The only harm here would have been to "scientific" chiropractors. Because, according to the AMA (but not the district court), plaintiffs were not and are not "scientific practitioners," they could not have suffered any injury from former Principle 3. If any chiropractors could establish antitrust injury, it

would be those who have "renonunced the theory of sublaxations and limit their practices to conservative physical therapy modalities." The AMA's argument thus hinges on its lengthy assertion that the four plaintiffs are "unscientific practitioners." The problem with this approach, however, is that the district court did not agree with the AMA that the plaintiffs were "unscientific" practitioners. Although the court acknowledge that there was some evidence that the plaintiffs did not use common methods in treating common symptoms, and that the treatment of patients appeared to be undertaken on an ad hoc rather than on a scientific basis, it did not go so far as the AMA believes, and established or find that the plaintiffs in this case were "unscientific practitioners." Indeed, it expressly held that no one involved in the case, including the plaintiffs, believed that chiropractic treatment should be used for treatment of diseases such as cancer, diabetes, heart

disease, high blood pressure, and infections. 671 F.Supp. at 1482. Regardless, neither the district court, nor this court is equipped to determine whether chiropractice is "scientific" or not. So the AMA's argument must fail in any event. We see the AMA's argument here as yet another invitation to tackle the question of whether chiropractic is "either good or bad, efficacious or deleterious, quackery or science." 671 F.Supp at 1481. The district court repeatedly stated it was not deciding whether chiropractic was scientific. 671 Supp. 1482 n. 8, 1482-83, 1506-07. Yet both sides (below it was plaintiffs, 671 F.Supp. at 1482; here, it is the AMA) continue to color their arguments with how they view their own, or the other side's profession. Like the district court, we do not see our task as deciding whether or not chiropractic is scientific.

The AMA also quibbles with the evidence of antitrust injury. The district court rejected the same

arguments. 671 F.Supp. at 1480. We too are unpersuaded. The AMA offers no good reason why we should accept its expert's opinion over that of the plaintiffs', and we decline to do so. But beyond that, the district court relied on more than just plaintiffs' expert in determining there was an antitrust injury. It also relied on the evidence of the "pervasive, nationwide, effective conspiracy which by its very nature would have affected the demand curve for chiropractic services and therefore adversely affected income of chciropractors." 671 F.supp. at 1480. (Further, we also note that the AMA is far too generous in its characterization of plaintiffs' expert's "concession" that the AMA's conduct was "lawful and pro-competitive.")

The evidence established that all chiropractors' incomes were lower than those of comparable limited licensed practitioners. And the evidence was that all chiropractors suffered an injury to their reputation.

671 F.Supp. at 1480. Indeed, the district court found that the individual plaintiffs suffered rejections and lost opportunities and that "the individual plaintiffs have been personally harmed, and continue to be personally threatened, by a lack of association with members of the AMA caused by the boycott and the lingering effects of the boycott." 671 F.Supp. at 1486. Moreover, the court stated that "[t]he activities of the AMA undoubtedly have injured the reputation of chiropractors generally. This kind of injury more likely than not was sustained by the four plaintiffs." Id. This directly refutes the AMA's contention that there was nothing but a showing of "class wide injury."

III.

Entitlement To Injunctive Relief

Section 16 of the Clayton Act provides that:

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive

relief...against threatened loss or damage by a violation of the antitrust laws...when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings.

15 U.S.C. Section 26. Although the district court concluded that the AMA's boycott ended in 1980 (when former Principle 3 was eliminated), it held that an injunction nevertheless was necessary in this case.

The trial court concluded there were lingering effects of the AMA's conspiracy; that the AMA never acknowledged the lawlessness of its past conduct, and in fact continued to maintain that it had always been in compliance with the antitrust laws; that the AMA had never publicly stated to its members the admissions made in the trial court about chiropractic's improved nature, despite the fact the

AMA currently claims that it made changes in its policy in recognition of chiropractic's change and improvement; that the AMA never publicly retracted articles such as "The Right and Duty of Hospitals to Deny Chiropractor Access to Hospitals"' that a medical physician had to read very carefully the current AMA Judicial Council opinions to realize that there had been a change in the treatment of chiropractors; and, finally, that the AMA's systematic, long-term wrongdoing and long-term intent to destroy chiropractic "suggest[ed]" that an injunction was appropriate. 671 F.Supp. at 1488. The court believed that it was important to make AMA members aware of the AMA's present position – that it is ethical for medical physicians to professionally associate with chiropractors, if the physician believes it is in his patient's best interest – to eliminate the unlawful boycott's lingering effects. The injunction, then, is to "assure that the AMA does not interfere

with the right of a physician, hospital or other institution to make an individual decision on the question of professional association." 671 F.Supp. at 1507.

The injunction requires the AMA to arrange publication of the district court's order in the Journal of the American Medical Association, mail the order to each of the AMA's members, and revise the current opinions of the AMA's Council on Judicial and Ethical Affairs (formerly the Judicial Council) so that it states the AMA's present position on chiropractic in a separate provision, with a heading and index references referring to chiropractors. 671 F.Supp. at 1507-08.

The AMA correctly points out that the district court wrongly placed the burden of proof on the AMA in deciding whether injunctive relief was appropriate in this case. But the AMA does not argue how, if at all, the court's error prejudiced it. We do not think the

AMA was prejudiced.

The district court treated the AMA's argument in this respect as an argument that the claim for injunction was moot instead of an argument that no injunctive relief was necessary. Although these concepts are similar, they are analytically distinct, and a court could find that a case is not moot yet deny injunctive relief. See United States v. Concentrated Phosphate Export Association, Inc., 393 U.S. 199, 203 (1968); W.T. Grant, 345 U.S. at 633; TRW, Inc. v. Federal Trade Commission, 647 F.2d 942, 953-54 (9th Cir. 1981); SCM Corporation v. Federal Trade Commission, 565 F.2d 807, 812 (2d cir. 1977). There are practical differences between the concepts, as well. The mootness burden is a heavy one, and the defendant must show that there is no reasonable expectation that the wrong will be repeated. By contrast, the burden for showing whether injunctive relief is necessary is on the

moving party; here plaintiffs. The district court wrongly placed the burden of persuasion on the AMA. 671 F.Supp. at 1984. But no matter which party bore the burden on this issue, the district court's ultimate findings leave no doubt that injunctive relief was appropriate.

A party moving for an injunction must show some cognizable danger of recurrent violation, that is, something more than the mere possibility which serves to keep the case alive. W.T. Grant, 345 U.S. at 633. "To be considered are the bona fides of the expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations." Id. Courts require "clear proof" that an unlawful practice has been abandoned, and must guard against attempts to avoid injunctive relief "by protestations of repentance and reform, especially when abandonment seems timed to anticipate suit, and there is a probability of

resumption." Oregon State Medical Society, 343 U.S. at 333. These issues are committed to the trial court's discretion. Id. at 634; see also U.S. v. Concentrated Phosphate, 393 U.S. at 203-04. Thus, we will not substitute our judgment for the district court's. The question is not how we would rule if we were addressing the question in the first instance. Rather, the question is whether the district court's decision was reasonable. See United States v. United States Currency in the Amount of $103, 387. 27, 863 F.2d 555, 561 (7th Cir. 1988).

We believe the court's decision was reasonable. If found a cognizable danger of recurrent violations, was unimpressed with the AMA's expressed intent to comply with antitrust laws, was un-persuaded by the effectiveness of the AMA's discontinuance of its boycott, and properly considered the systematic and long-term nature of the boycott. W.T. Grant, 345 U.S. at 633.

The AMA characterizes many of its challenges to the district court's decision to order an injunction as attacks on the court's findings of fact. Thus, for example, the AMA argues that the district court "erroneously found a risk of recurrence." But the facts are relatively undisputed. The AMA is really challenging the district court's decision that those facts supported an injunction.

In this regard, the district court found that the AMA's behavior in connection with the 1983 revision of the JCAH accreditation standards for hospitals indicated the AMA's likelihood of returning to its old (anti-chiropractic) ways. (The facts surrounding the 1983 revisions are set out more fully in section IV below, in connection with plaintiffs' cross appeal against JCAH.) The AMA's original position toward those standards was favorable to chiropractors in that it supported the JCAH position that each hospital be permitted to decide for itself, under

applicable state law, which licensed health care providers would be allowed hospital privileges and membership on the medical staff. However, after an outcry from its membership the AMA was forced to change its original position to satisfy its constituents, namely medical physicians; it thus sought to have JCAH approve a more restrictive accreditation standard which would ensure medical and osteopathic physicians control of the medical staff and patient care in hospitals. 671 F.Supp. at 1476, 1488. This incident led the trial court to conclude that the AMA's "present assurances [were] good only until the next chiropractic battle." Id. at 1488.

The facts surrounding the 1983 JCAH revisions are not in dispute. Even so, the AMA terms the district court's reliance on this incident as "baffling." Thus, it contends that even under the district court's injunction order it will still be allowed to urge restrictions on chiropractors before recognized

accrediting bodies, and that is conduct regarding the JCAH standards would be consistent with that mandate. The AMA also argues that the district court's conclusion that the JCAH's 1983 revision was reasonable indeed proper, validates the AMA's call to action to ensure medical and osteopathic physician control of media staff and patient care. We disagree. While the AMA, under the district court's order, may in the future be free to urge restrictions or take positions with respect to chiropractic, the AMA's action with respect to the 1983 JCAH's initial standards were consistent with the then current antitrust legal climate, it was unable to maintain its position in the fact of a barrage of criticism from its members, 671 F.Supp. at 1476-77. That coupled with the fact that the district court found the AMA even throughout the date of trial continued to respond to requests for information on chiropractic by sending out anti-chiropractic literature, id., was enough for

he district court properly to conclude that there was evidence that suggests a possible return to the AMA's former policies. Finally, the JCAH's action in 1983, although found reasonable and proper, is wholly distinct from the AMA's action. JCAH was an independent body, motivated by completely different concerns. Thus, while the AMA was attempting to contain and eliminate competitors (i.e. chiropractic), JCAH was acting only to assure that responsibility for patient care in acute care hospitals remained in the hands of medical and osteopathic physicians, the only practitioners who could perform that acute care. In challenging the need for an injunction, the AMA also contends that it is legally bound by settlements in three separate chiropractic antitrust lawsuits to the position that chiropractors are licensed limited practitioners and that no form of professional association with chiropractors is unethical. These settlements, according to the AMA, eliminate any

threat that the boycott will recur. Again, we disagree. Although the settlements may be some evidence militating against the likelihood of recurrence, it is not so strong as to reverse the district court's determination. The trial court considered this evidence, 671 F.Supp. at 1487-88, but found it was outweighed by other evidence (recited above in connection with the JCAH 1983 revisions) of a risk of a return to the AMA's former policies. Id. at 1488. Notably, the district court found it relevant that in all of the settlements, there was no admission of liability.

The AMA additionally argues that the permanence of its post 1977 guidelines (and hence the unlikelihood of a return to its old ways) is emphasized by the "fact" that they were undertaken entirely independently of this lawsuit. However, the district court never found this "fact;" and the district court could properly be skeptical of the AMA's

"protestations of repentance and reform." Oregon State Medical Society, 343 U.S. at 333, especially since the AMA's change of position occurred not too long after this suit was filed in 1976.

Another factor supporting the injunction is that the AMA still vigorously maintains that its boycott activity was lawful, and has never acknowledge its past conduct's lawlessness. This coupled with the AMA's begrudging statement on professional association with chiropractors was sufficient for the district court to doubt (1) the AMA's intent to comply with the antitrust laws in the future absent an injunction, and (2) the effectiveness of the discontinuation of its illegal conduct. Importantly, the district court found that even as of the trial date, the AMA continued to respond to requests for information on chiropractic by sending outdated anti-chiropractic literature. Further, none of the AMA's policies contain any affirmative statement that the

boycott is over. An example of the AMA's begrudging and ineffective removal of the ethical bar to professional association is Opinion 3.01 of its Judicial Council. The AMA cites Opinion 3.01 as evidence that its revised guideline has eliminated the prior guidelines on chiropractic, and removed any negative referees to specific licensed limited practitioners. But as the district court noted, Opinions 3.01 is entitled "Nonscientific Practitioners." Thus, the AMA member still must look under the heading "Nonscientific Practitioners" to discover that it is now permissible to associate with chiropractors. Any beneficial effect of Opinion 3.01 likely is lost because it is buried in a category almost certain to conjure up the ethical prohibitions of the past.

Yet another factor supporting an injunction is what the district court termed the boycott's "lingering effect." The court found not only that plaintiffs had been personally harmed by the boycott, but that they

continued to be personally harmed and threatened by a lack of association with members of the AMA as a result of the boycott and its lingering effects. 671 F.Supp. at 1486. The boycott, while it was in full bloom, "more likely than not affected individual decision making by AMA members and other medical physicians in their relationship with chiropractors;" and until AMA members learn that the AMA's policies in fact have changed, AMA members' decision-making with respect to professional association with chiropractors will continue to be affected, according to the trial court. The evidence amply supported this conclusion. It is based not only on the lengthy and successful boycott, but on the begrudging nature of the AMA's more recent and lawful changes.

The district court also found a continuing injury to chiropractors' reputations as a result of the boycott. Because the AMA has never made any attempt to

publicly repair that damage, the court found that chiropractors will continue to suffeer injury to reputations from the boycott. 671 F.Supp at 1486-87. The AMA's publication of its changes and its settlements were not enough, in the eyes of the district court, to overcome these harmful effects. The AMA has not convinced us that the district court was wrong in this assessment.

The AMA's strongest challenge comes to the district court's findings with respect to the lingering effects on chiropractors' incomes. The court found that the injury to chiropractors' incomes threatened to continue through the date of trial. 671 F.Supp. at 1487. The court did not, however, "find," as the AMA contends, that chiropractors' incomes had actually increased in 1984; rather, it only acknowledged the expert's data in this regard. Id. Obviously, given its finding regarding 1986 income levels (i.e., that chiropractors' incomes continued to suffer), the court

was more persuaded by the expert's income projections into 1986 regarding the lagging chiropractors' income, than by the 1984 data. The AMA's assertion that there is no basis for the district court to rely on the projection of chiropractors' incomes is baseless. There was testimony that chiropractors' incomes would still have suffered in 1986 as a result of the boycott. (Jt. App. 57.) But even without the lingering effects on chiropractors' income, there still remain the effects on professional association and reputation, which by themselves may be sufficient to show continuing harm from the boycott.

In sum, even though the district court wrongly allocated the burden of proof in deciding whether injunctive relief was necessary, its ultimate findings regarding the risk of a return to the unlawful policies, the effectiveness of the AMA's discontinuance or voluntary cessation, and the

character of the past violations, without question satisfy the proper standard. W.T. Grant, 345 U.S. at 633. None of the objections the AMA raises on appeal undercuts the district court's decision to grant an injunction. That the AMA feels an injunction is not necessary (or for that matter, that even we may have felt the same had we considered the case as an original matter), is not the appropriate test. That call was for the district court to make. Id. Because the district court did not abuse its discretion, we uphold its decision to award injunctive relief.

Anticipating this negative (for it) result, the AMA makes a last-ditch perfunctory argument. It attacks the injunction, arguing that it is unnecessarily overbroad, purports to award class wide relief in a case that was never certified as a class action, and "Implicate[s] the AMA's rights under the First Amendment." None of these arguments are convincing.

True enough, as the AMA observes, an injunction in a private antitrust suit should award a plaintiff injunctive relief "only to the extent necessary to protect it from future damage likely to occur if the defendant continues the unlawful antitrust conduct." Ohio-Sealey mattress Manufacturing Co. v. Sealey, Inc., 669 F.2d 490, 495 (7th Cir. 1982). But beyond this general principle, the AMA does not make any genuine argument that the injunction is over broad. Instead, it simply asserts that the primary beneficiaries of the district court's order, insofar as it requires the order to be mailed to every AMA member, that it be published in the Journal of the American Medical Association, and that the AMA revise a national ethical publication, are the some 30,000 chiropractors in the nation as a whole who were not parties to this case. Doubtless, these other chiropractors may benefit from the mass mailing and

publication required by the district court's order. But this does not necessarily make the injunction overbroad.

The AMA's suggestion that the publications and mailings should have been limited to the four communities in which the individual plaintiffs practiced unnecessarily limits the relief, and ignores the public interest served by private antitrust suits. Such suits can effectively open competition to a market that was previously closed by illegal restraints. National Society of Professional Engineers, 435 U.S. at 698; see also International Salt Co. v. United States, 332 U.S. 392, 401 (1947). Relief here is provided not only to the plaintiff chiropractors (e.g., by the publication and mailing of the order to AMA members), likely will eliminate such anticompetitive effects of the boycott as interfering with consumers' free choice in choosing a product (health care provider) of their liking. In this way competition is served by the injunction. In short,

the injunction, as designed by Judge Getzendanner, reasonably attempts to eliminate the consequence of the AMA's boycott, and we will not disturb it. National Society of Professional Engineers, 435 U.S. at 698.

Finally, we reject the AMA's hint ("argument" seems too generous when the AMA's claim comprises but one paragraph of a 77-page brief, Max M. v. New Trier High School District No. 203, 859 F.2d 1297, 1300 (7th Cir. 1988) that the district court's order somehow infringes on the AMA's First Amendment rights. We think the injunction as written is sufficiently tailored to avoid constitutional objection. As the Supreme Court has stated:

> [w]hile the resulting order may curtail the exercise of liberties that the [defendants] might enjoy, that is a necessary and, in cases such as this, unavoidable consequences of the violation.... The First Amendment does not 'make it ... impossible

ever to enforce laws against agreements in restraint of trade ....' Giboney v. Empire Storage and Ice Co., 336 U.S. 490, 502. In fashioning a remedy, the District Court may, of course, consider the fact that its injunction may impinge upon rights that would otherwise be constitutionally protected, but those protections do not prevent it from remedying the antitrust violations.

National Society of Professional Engineers at 697-98. That the injunction requires the AMA to publicize and mail copies of the order to AMA members, among other things, does not render it unconstitutional. The district court's form of injunction and method of ensuring its publication (and thus its efficacy) was a reasonable attempt at eliminating the consequences of the AMA's lengthy, systematic, successful, and unlawful boycott.

IV.

Plaintiffs' Corss-Appeal

Plaintiffs filed a cross-appeal challenging the judgments for defendants JCAH and ACP. With respect to JCAH, plaintiffs advance two separate theories of liability. First, they allege that JCAH unlawfully conspired with the AMA and participated in the AMA's boycott of chiropractors. Second, plaintiffs contend that JCAH, as a membership trade association, acted as a conspiracy each time it promulgated industry standards, and thus violated the antitrust laws in its own right. As to the latter theory of liability, plaintiffs assert that they raised it before the trial court, but that the court never ruled on it. JCAH does not contest this summarization of the events in the district court, and we accept it. Plaintiffs' theory against ACP also is two-fold. They first contend that ACP also participated in the AMA's boycott. Second, they charge that ACP is a member of the "continuing conspiracy that is the JCAH." None of plaintiffs' arguments are persuasive.

Following the first trial in this case, JCAH and ACP appealed the denial of their motions for a directed verdict. We affirmed the denial of those motions, explaining that the evidence was sufficient to permit, but not require, a jury (or, as it turned out, the trial court) to conclude that the defendants JCAH and ACP knew that concerted action in a scheme was contemplated in that scheme. Wilk I, 719 F.2d at 233. This would have permitted a finding of liability, we reasoned, citing Theater Enterprises Inc. v Paramount Film distributing Corp., 346 U.S. 537, 540 (1954); Interstate Circuit Inc. v. United States, 306 U.S. 208, 226-07 (1939).

Following Wilk I, the Supreme Court decided two cases, which the district court in the second trial held clarified and limited the cases relied upon in Wilk I. These cases were Monsanto v. Spray-Rite Service Corp., 465 U.S. 752 (1984), and Matsuhita Electric Industrial Co. v. Zenith Radio Corp. 475 U.S. 574

(1986). In Monsanto, the Court held that, to survive a summary judgment motion, an anti-trust plaintiff needed evidence tending to "exclude the possibility" that the alleged conspirators were acting independently, id. at 764, and that the plaintiff must present "direct or circumstantial evidence that reasonably tends to prove" that the alleged conspirators "'had a conscious commitment to a common scheme designed to achieve an unlawful objective.'" Id., quoting Edward J. Sweeney & Sons v. Texaco, Inc., 637 F.2d 105, 111 (3d Cir. 1980), cert. denied, 451 U.S. 911 (1981). Matsushita reaffirmed that holding. There, the Court stated "conduct that is as consistent with permissible competition as with illegal conspiracy does not, without more, support an inference of conspiracy," 475 U.S. at 597 n.21. Applying Monsanto and Matsushita, the district court analyzed plaintiffs' claims to determine whether or not each defendant's own conduct showed

membership in the AMA's conspiracy. 671 F.Supp. at 1489. We review each defendant separately. Again, because the district court adequately set forth the facts, we only summarize them here.

A. JCAH

JACH is a not-for-profit corporation established for the purpose of setting standards and conducting health care accreditation programs in conjunction with those standards. JACH's members include the AMA, ACP, the American College of Surgeons, the American Hospital Association, and the the American Dental Association. It is governed by a board of commissioners. Twenty-one commissioners are appointed by the various members, who then appoint one public commissioner, the AMA is one of the JCAH's two "dominant members" (this characterization being based solely on the number of commissioners each member is allotted). Participation by hospitals in the JCAH's

accreditation program was voluntary. Nevertheless, accreditation was important to a hospital and "loss of accreditation would be devastating." Id. at 1490. Since before 1958, JCAH had standards providing that hospital medical staffs were to be limited to fully licensed physicians (this was liberalized in 1970 to include dentists). Id.

In 1964, JCAH's director stated, in a national newsletter, that JCAH viewed chiropractors as cultists, and that hospitals that encouraged such cultists to use their facilities in any way would "very probably be severely criticized and lose [their] accreditation." Despite the similarity of this statement to later AMA efforts, the district court found there was no direct evidence that JCAH was acting in concert with the AMA with regard to this statement or its distribution; thus, it concluded this action was independent.

In 1970, JCAH completed a revision of its standards

and published an accreditation manual for hospitals. The manual included "Standard X" (which was drafted by the AMA). Standard X provided that the governing board of each hospital had to assure that medical staff members practiced in an ethical manner. The accreditation manual included a source reference to the AMA'S Principles. The district court found that the un-contradicted testimony was that JCAH's board of commissioners never discussed the subject of chiropractic in connection with the accreditation manual. It further found that no chiropractor participated in the accreditation manual's revision process despite the opportunity to participate. Id. Based on these findings, the court concluded there was no evidence that JCAH adopted Standard X in connection with chiropractors or to further the AMA's boycott. And while JCAH letters responding to inquiries from hospitals about the role of chiropractors throughout the 1970's did indicate

that JCAH would withdraw accreditation of a hospital that had chiropractors on its medical staff or that granted privileges to chiropractors, the district court found these letters were completely consistent with the then-existing accreditation standards, and were "not convincing evidence that JCAH had joined the conspiracy against chiropractors." Id.

Finally, in 1977, JCAH revised its standards to provide that medical staff membership was to be limited "unless otherwise provided by law" to fully licensed physicians and dentists. References to the AMA's Principles were deleted So from 1977 on. JCAH's position on chiropractors was that as limited licensed practitioners, they could be included on medical staffs, if permitted under local law. In 1980, JCAH amended the accreditation manual by deleting Standard X.

Based on these findings, the district court found that all JCAH undertook all action from 1964 through

1980 independently of the AMA boycott. Further support for its conclusion was the fact that JCAH's standards were largely consistent with federal law. Id.

Likewise, the district court found that the 1983 revisions of the JCAH standards were independent of the AMA boycott, and that the 1983 revisions were not evidence that the conspiracy against chiropractors continued into 1983. Ultimately, JCAH standards were liberalized regarding admission to medical staffs and allowance of hospital privileges to limited licensed practitioners, including chiropractors. But the standard also required that each accredited hospital's medical staff have an executive committee, the majority of which had to be medical and osteopathic physicians. (This, according to plaintiffs, is evidence that the conspiracy against chiropractors continued into 1983.

In 1983 the AMA participated in the JCAH

standards revision process. That process began in 1982 with recommendations from JCAH staff and the JCAH standard-survey procedures committee. The early recommendations were that each hospital be permitted to decide for itself, under applicable state law, which licensed health care providers would be allowed hospital privileges and medical staff membership. After initially supporting this approach, AMA members and other medical societies which wanted to ensure medical and osteopathic physician control of the medical staff and patient care in hospitals criticized the AMA. Feeling the heat of their members' criticism, the AMA changed its position and supported revisions which would ensure such control. In late 1983, JCAH adopted new standards which included the mandatory, medical physician-dominated executive committee concept. According to the district court, the evidence supported the conclusion that JCAH members were

acting to ensure that the responsibility for patient care in acute care hospitals remained in the hands of medical and osteopathic physicians, and that this was an appropriate goal for JCAH. Patients in acute care hospitals are generally the very sick or in need of surgery. They are patients who require treatment with drugs or surgery – i.e., treatment by full licensed physicians (that chiropractors may not perform). This led the court to conclude that "[t]he evidence supports no conclusion other than that patient care in acute care hospitals, and the medical staffs of acute care hospitals, ought to be under the control of fully licensed physicians rather than limited licensed practitioners. I am persuaded that the JCAH members were not acting to prevent chiropractors from being admitted to hospitals or obtaining hospital privileges." 671 F. Supp. At 1493. Because the court found that JCAH's acts before the 1983 revisions were independent of the AMA boycott,

and that the 1983 revisions were not evidence that the conspiracy against chiropractors continued into 1983, it concluded that plaintiffs failed to prove that JCAH was a member of the conspiracy. Id. at 1494.

1. JCAH as Conspiracy

Plaintiffs' first theory on appeal is that JCAH, as a trade association, "acts as a conspiracy or combination every time it promulgates industry standards [which unreasonably restrain competition]." But a trade association is not, just because it involves collective action by competitors, a "walking conspiracy." Consolidated Metal Products, Inc. 846 F.2d at 293-94. There is no evidence that JCAH's accreditation program "is merely a ploy to obscure a conspiracy" against chiropractors. Id. at 294. And plaintiffs' arguments for a separate antitrust violation with respect to JCAH standing alone are unpersuasive.

The most serious problem with plaintiffs' theory is

that they did not prove any actual or threatened antitrust injury directly traceable to the alleged antitrust violation which would be redressed by the issuance of an injunction against JCAH. See Cargill, Inc. v. Monfort of Colorado Inc., 479 U.S. at 122. Thus, even if this particular claim was not expressly addressed by the district court, plaintiffs' claim still must fail. In support of their contention that they suffered actual injury, plaintiffs offer "evidence" of examples of when each plaintiff was denied privileges or medical staff membership at certain hospital. But after thoroughly reviewing the record, we conclude these examples do not show any connection to JCAH or its Standard X. (Jt. App 13-14; 15-17; 89-100; 181; 182-187; 190-91; 380-81; 420; 672-81; 773-74; 851; and 934-35.) Because we find no antitrust injury occurred as a result of the 1970 Standard X, we necessarily conclude that there was no continuing JCAH boycott as a result of the

revisions in 1983.

2. JCAH as Member of the AMA Boycott]

Plaintiffs' second theory of antitrust liability against JCAH contends that JCAH was a member of the AMA's boycott. In this regard, plaintiffs contend that JCAH knew the AMA boycott was contemplated and that it acquiesced and participated in that scheme. As stated above, the Monsanto and Matsushita cases hold that to establish liability under this theory, there must be evidence that at least tends to exclude the possibility that the alleged conspirators were acting independently, rather than pursuant to "conscious commitment to a common scheme designed to achieve an unlawful objective'." Monsanto, 465 U.S. at 764, quoting Edward J. Sweeney & Sons, 637 F.2d at 111. Plaintiffs, however, argue that Monsanto and Matsushita are inapplicable to this case because here we are dealing with a horizontal combination, and because there is

"direct evidence" of a conspiracy in that case. We agree with the district court, however, that this case should be governed under the standards set forth in Monsanto and Matsushita. We have stated before, "[t]he actual label placed on the conspiracy is a 'pedantic distinction,' as the Monsanto standard applies regardless of which label is attached." Valley II, 822 F.2d at 660 n. 5. And plaintiffs point to no "direct evidence" of the conspiracy.

At best, plaintiffs make only a perfunctory argument that JCAH knowingly adhered to and participated in the AMA's unlawful boycott. Nowhere do they attempt to show just how the district court made erroneous findings of fact. Rather, they point to the fact that JCAH adopted Standard X (after being manipulated by the AMA in doing so) to establish JCAH's participation in the boycott. But the district court found that JCAH's board of commissioners never discussed the subject of chiropractic, and that

the subject was never raised in connection with the 1970 revisions of the accreditation manual. It also found that no chiropractor participated in the revision process despite having an "extensive opportunity" to do so. Thus the court held "[t]here was no evidence that JCAH adopted Standard X in connection with chiropractors or in furtherance of the AMA boycott." 671 F.Supp. at 1490. Plaintiffs' urgings to the contrary are nothing but a bald invitation to substitute our judgment for the district court's. Consistent with our prior treatment of this issue in Wilk I, 719 F.2d at 233, the evidence may have been sufficient to find that JCAH participated in the conspiracy, but it did not require such a finding. The district court was entirely within its right to find no conspiracy between JCAH and the AMA.

As evidence of JCAH's participation in the conspiracy, plaintiffs also point to the district court's

finding that JCAH cooperated with the AMA in connection with the distribution of an article titled "The Right and Duty of Hospitals to Exclude Chiropractors from Hospitals." Apparently, they believe this carries the day in establishing JCAH's participation in the boycott. We disagree. As the district court found, the JCAH's use of the cited article was in connection with inquiries from hospitals about the role of chiropractors in hospitals. 671 F.Supp. at 1490. The court also found that the JCAH letters were "completely consistent with the then existing accreditation standards." Id. We thus agree with the district court that this was "not convincing evidence" that JCAH participated or joined in the AMA's conspiracy against chiropractors. Id. Cf. Monsanto, 465 U.S. at 762 (communication about prices and marketing strategy does not alone show that distributors are not making independent pricing decisions).

B. ACP

The analysis and outcome would be much the same for ACP as for JCAH, at leas so far as its alleged participation in the AMA's boycott is concerned. ACP's alleged membership or participation in the AMA's unlawful boycott, for example, is also judged under the Matsushita and Monsanto standards. Here, though, we must digress briefly to address a problem with plaintiffs' argument. Their claims in this respect seem at best to be confused. In their opening brief, they refer to the ACP's participation in the boycott," and argue that the district court's finding that the ACP did not participate in any boycott of chiropractors is clearly erroneous. The district court's findings in this regard concern whether or not ACP was a member of or participated in the AMA's conspiracy. 671 F.Supp. at 1471, 1489, 1494-96. It is obvious from the district court's opinion, and from plaintiffs' opening brief, that the

"boycott" referred to is the AMA's unlawful boycott. But in their reply brief, plaintiffs say it is "irrelevant" whether or not ACP conspired with the AMA. In other words, they are arguing that the district court's finding that ACP was not a member of the AMA's boycott, 671 F.Supp. at 1494-96, is not at issue on this appeal. We will take them at their word; that issue is now foreclosed against them. Apparently, then, plaintiffs are claiming, as they did with JCAH, that the ACP as a membership association engaged in concerted activity through various acts. That is, the ACP is liable under Section 1 of the Sherman Act in its own right. Plaintiffs also present a second theory of liability: that the ACP as a member of the JCAH, is liable for the unlawful acts of that organization because it knowingly participated in and ratified those acts.

1. ACP as a Conspiracy

There is no evidence that ACP itself engaged in an

unlawful boycott of chiropractors. Plaintiffs point to the ACP's bylaws which provided that the purpose of the ACP included "preserving the history and perpetuating the best tradition of medicine and medical ethics." Because of the fact that many of the ACP's members were also AMA members, plaintiffs argue that this veiled reference to ethics somehow furthered an ACP boycott. But the ACP never adopted the AMA's Principles (including former Principle 3), and never required its members to subscribe to those principles. 671 F.Supp. at 1494. Also, the ACP never had a code of ethics. In 1984 it published the American College of Physicians ethics Manual. But this was not a code or set of regulations. Rather, it was an effort to address major contemporary issues confronting all physicians and merely attempted to stimulate debate on medical ethics. The manual stated nothing about chiropractic or about what remedies are or are not "scientific."

Indeed, as the district court found, the manual appears to leave the individual physician free to make his own judgment as to the kinds of treatment he should participate in and in his relations with other licensed health practitioners. 671 F.Supp. at 1494.

The plaintiffs rely on two additional documents to establish an ACP boycott. The first grew out of a September 1978 meeting of the ACP's board of governors. (The board of governors was not the ACP's policymaking body.) The Board at that meeting accepted a report by an ad hoc committee appointed to suggest what might be done to promote the ACP's policy toward chiropractic. According to the district court, the minutes of that meeting reflect that:

> The committee agreed unanimously that ACP should be concerned about and oppose any action which would include chiropractic among the scientifically based modes of medical care and which

would give chiropractors direct access to the diagnostic facilities of hospitals.

671 F.Supp. at 1495. Plaintiffs also point to a resolution adopted by the board of governors which provided, among other things:

(2) the governors should remain alert to effort of chiropractors to gain access to radiographic and clinical laboratory diagnostic facilities in their regions and keep ACP headquarters informed of such developments;

.....

(8) The governors should alert colleagues in other disciplines to the efforts of chiropractors to gain access to radiographic and clinical pathology diagnostic facilities; and

(9) the governors and the college members in their regions should discuss these matters with their county and state medical societies and with their representatives to the house of delegates of the AMA.

671 F.Supp. at 1495-96.

Although the district court found that many parts of the resolution related to matters protected under the Noerr-Pennington doctrine, not everything included was protected. (This is not at issue on appeal.) What is important is that the district court found that the resolution contained no call for the participation of ACP or its members in the AMA's boycott against chiropractors, "or [in the] ACP's own boycott." 671 F.Supp. at 1496. Continuing, the court explained "[m]oreover, the resolution was never implemented ...and there is no evidence that ACP members were called upon to cooperate in effectuating ACP's 'policy' on chiropractic." Id. Plaintiffs do not show how the district court's findings are clearly erroneous; rather, they just interpret the document differently. It is well established by now, however, that we do not substitute our view of the facts for the district court's on appeal. After reviewing the evidence, we are not

left with the "definite and firm conviction" that the district court made a mistake in interpreting this evidence. Anderson v. City of Bessemer City, 470 U.S. 564, 574 (1985).

Plaintiffs also point to a joint document in which the ACP participated, titled "Status Report on Chiropractic Lawsuits" to establish an ACP conspiracy. The report was distributed to ACP members. It does contain an admission that Principle 3 forbade association with chiropractors. But, as the district court explained, this admission was irrelevant as to ACP which had not adopted the AMA's Principles and which did not have a medical ethic similar to Principle 3. We agree. Again, plaintiffs just offer their different interpretation of the document, which has never been enough to carry the day when reviewing a district court's factual determinations. We see no error."

2. ACP Participation in JCAH'S Conspiracy

Finally, plaintiffs contend that ACP is a member of "the continuing conspiracy that is the JCAH." But since we have held JCAH did not violate the antitrust laws, ACP could not be liable for participating in JCAH's acts. Thus, plaintiffs' theory that ACP is liable for participating in JCAH's conspiracy fails.

V.

Conclusion

We affirm the district court's finding that the AMA violated Section 1 of the Sherman Act by conducting an illegal boycott of chiropractors, and the district court's decision to grant an injunction against the AMA. In finding liability, the court did not improperly rely on evidence of conduct protected by the Noerr-Pennington doctrine. The district court's factual findings supported its finding that the AMA's boycott was illegal under the rule of reason, and those findings were not clearly erroneous. The

district court also did not clearly err in finding that the AMA did not meet its burden of proving its patient care defense, and in finding that the AMA's boycott caused the plaintiffs past injury and the threat of future injury. The court did not abuse its discretion in imposing an injunction on the AMA. The court's factual findings supported its exercise of equitable discretion, and the injunction was not overbroad.

We also affirm the district court's findings that JCAH and ACP did not participate in the AMA's boycott, or in any other way violate Section 1 in their activities concerning chiropractors. The plaintiffs' theory that the JCAH itself conspired by setting standards fails because the plaintiffs failed to prove that the JCAH's actions caused them any actual or threatened injury. The court's finding that JCAH did not participate in the AMA's conspiracy was not clearly erroneous. The plaintiffs have waived any

contention that ACP participated in the AMA's conspiracy by claiming that any such participation was "irrelevant." The district court did not clearly err by finding that ACP did not conduct its own conspiracy, and since JCAH did not violate Section 1, ACP could not be liable for participating in JCAH's actions.

The district court's decision is AFFIRMED.

Clerk of the United States Court of
Appeals for the Seventh Circuit

Appendix M-2

SECTION – 13

Appendices N - S

APPENDIX N

Tri-City Herald Tuesday, September 28, 1993

Denturist can continue to practice judge rules

By: Fay Tolley smith

Herald Staff Writer

A Pasco denturist won a small victory Monday when Franklin County Superior Court Judge Dennis Yule rejected a state requet to temporarily stop him from making dentures.

But it might have been at a high cost, Yule cautioned.

Randall Vize can now expect a major legal battle. In a few weeks the state Department of Health plans to take legal steps to stop him permanently, Kevin Hartze, assistant attorney general, said Monday.

"You are wanting us to reverse the Third Division of Appeals and invade" the domain of the Legislature, Yule said. "(The courts) don't have authority."

On Monday, about 25 of Vize's supporters, many of them elderly and fellow denturists gathered in the

Pasco courtroom. An inch-thick stack of letters in his case file gave endorsements to his denture service.

The state says that Vize takes impressions, makes and repairs dentures, all of which fall under the state's definition of a dentist. Therefore, he needs a state dental license, Hartze claimed.

Vize has operated First Choice Denture Service in Pasco since 1991. In 1989, he received a master business license from the state Department of Licenses. His license application said he would make, fit, alter and repair full or partial dentures.

Because Vize's work is not supervised by any controlling board or required to meet state standards, he could cause irreparable damage or harm to the public and is a threat to its health and welfare, Hartze said.

Vize maintains the state heald department and dentists are trying to put him out of business because he is cutting into dentists' pocketbooks.

defense attorney Jim Egan said. Vize argued that peope who come to First Choice Denture Service without first going to a dentist can save about 50 percent of denture costs.

Without his service, many people on fixed incomes could not afford dentures because Tri-City dentists refuse to take medical coupons from Social Security recipients, Egan alleged in court documents.

It was within the state's police power to shut down Vize's unlicensed practice, Hartze said. Argument similar to Vizes have been offered by denturists in cases around state. All the arguments have been rejected and the courts including the Eastern Washington division of the state Court of Appeals, have upheld the dentist license requirement, Hartze said.

The quality of Vize's work was not being judged, he said.

Egan said he would attempt to provide the need for

his client's work and would challenge the constitutionality of state officials trying to force Vize to meet regulations imposed on dentists.

The case typifies the frustration in the health care and insurance industries, Curtis Mohr said after listening to the hearing Mohr of Pasco is a New York Life Insurance agent.

The fundamental problem is that demand for health services and products exceeds the supply and has forced prices, including insurance to rise, Mohr said. "We seem to be doing a lot of things to make matters worse," he said. "This guy needs to be able to keep working."

Appendix N-1

Judge won't stop denturist from continuing practice

By: Gary E. Nelson
Of the Herald-Republic

A judge refused Friday to issue an order forbidding a Yakima man to make dentures with a dentists license.

The state attorney general's office had sought the preliminary injunction against Yakima denturist Keith Allison on behalf of the state Department of Licensing. The department has filed suit against Allison and five other denturists around the state, accusing them of practicing dentistry without a license.

A judge in Whatcom County has denied an identical request in the case against a Bellingham denturist. While an injunction was issued against a Spokane man... (Last sentence is false – Keith Allison)

The state argues that the Dental Practice Act includes the making and fitting of dentures within the definition of dentistry, which requires a degree

from a dental school and a state license.

The denturists say the law is unconstitutional and deprives consumers, especially senior citizens, of a cheaper way to obtain dentures. They accuse the Washington Dental Association of fighting any change in the law to protect their income at the expense of consumers.

A group of senior citizens and denturists demonstrated in front of the county courthouse Friday morning with picket signs to dramatize their support of Allison.

In court Friday afternoon, Amanda Tomlinson, an assistant attorney general representing the state, told Yakima County Superior Court Judge F. James Gavin the case was clear.

"There is only one issue in this case, and it is a very simple one, although there are political ramifications," she said.

Allison is practicing dentistry without a license, and

should be stopped, Tomlinson said.

Steven Mura, Allison's attorney, said state officials issued Allison a business license after he told them he wanted to make dentures here. The stat now wants to shut Allison down, after he moved to Washington form California and borrowed money to open a denture practice, Mura said.

It is unfair for the state to ask now that Allison's business be shut down, Mura said.

Also, Mura said, a new state law passed in 1983 said anyone should be able to practice a health profession unless doing so would pose a threat to the health and safety of the public. He said Allison is fully qualified to make and fit dentures, and his work poses no public health threat.

The state must prove such a threat exists in order to justify an injunction being issued he said.

Mura said the case hinges on the constitutionality of the Dental Practice Act. Under the constitution, the

the Dental Practice Act. Under the constitution, the state has the power to regulate professions such as dentistry only in order to protect the public.

Since there is nothing to protect the public from, the part of the Dental Practice Act that includes making dentures is unconstitutional, Mura said. If the court shuts Allison down now, he will be unable to afford to pursue the case to trial and have the constitutional question decided once and for all, he added.

Tomlinson said the argument that Allison is good at what he does is immaterial.

That may very well be true, your honor, but that is not an issue in this case, she said.

And, she added, the courts have upheld the Dental Practice Act in past cases.

Not only is the defendant asking this court to allow him to practice illegally, he's asking this court overturn Washington State Supreme Court case law, Tomlinson said. Basically, what Mr. Allison is doing

is asking this court to license him.

Tomlinson also said the letter Allison sent to state licensing officials did not say he intended to make dentures without a denturists prescription.

Denturists may make dentures in Washington under a dentists prescription.

Gavin said the case is a complicated one.

I had the initial impression that this was a fairly simple case, he said.

Gavin said he paid close attention to an opinion from the State Health Coordinating Council that said denturists pose no threat to the public and should be allowed to practice. A bill to accomplish that died in the 1987 Legislature.

"There can be portions or parts of practices that really do not invade the public health and welfare," Gavin said.

"That raises an issue that needs to be decided, since the state may only regulate professions to

protect the public," he said.

"I will not issue an injunction under circumstances like that because I don't think it would be appropriate," Gavin said (emphasis added).

Gavin stressed that Allison may continue in business while his case proceeds through the courts, but he may only make replacement dentures, not dentures for people who have never worn them before.

Appendix N-2

APPENDIX 0

Subchapter 1981. Equal Rights Under The Law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b)"Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c)Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

Appendix O-1

COLOR OF LAW Civil Rights Violations

From FBI website at

http://www.fbi.gov/hq/cid/civilrights/color.htm

It is a crime for one or more persons acting under color of law willfully to deprive or conspire to deprive another person of any right protected by the Constitution or laws of the United States.

"Color of law" simply means that the person doing the act is using power given to him or her by a governmental agency (local, state or federal).

Criminal acts under color of law include acts not only done by local, state, or federal officials within the bounds or limits of their lawful authority, but also acts done beyond the bounds of their lawful authority. Off-duty conduct may also be covered under color of law, if the perpetrator asserted their official status in some manner.

Color of law may include public officials who are not law enforcement officers, for example, judges and

prosecutors, as well as, in some circumstances, non governmental employees who are asserting state authority, such as private security guards

While the federal authority to investigate color of law type violations extends to any official acting under "color of law," the vast majority of the allegations are against the law enforcement community.

The average number of all federal civil rights cases initiated by the FBI from 1997-2000 was 3513. Of those cases initiated, about 73% were allegations of color of law violations. Within the color of law allegations, about 82% were allegations of abuse of force with violence (59% of the total number of civil rights cases initiated).

The Supreme Court has had to interpret the United States Constitution to construct law regulating the actions of those in the law enforcement community. Enforcement of these provisions does not require that any racial, religious, or other discriminatory

motive existed.

Appendix O-2

APPENDIX – P

August 18, 1993

Dear Reader:

On Friday, August 13, 1993, I called with a question about an endorsement on my Corporate License. At this time, the lady on the phone informed me this wasn't my business license. I told her I was confused and I didn't think I had one. After looking, I found the copy of License and Registrations. (Copies Enclosed) I'm still a little confused. Please explain the Registered Trade Name endorsement. And, do I now have all the endorsements needed to conduct business as a denturist in the state of Washington?

Thank You.

Rick Miller

Appendix P-1

DEPARTMENT OF LICENSING
BUSINESS AND PROFESSIONS
P.O. Box 9034
Olympia, Washington 98504-9034

ATTN: RICK MILLER
CASCADE DENTURE CLINIC, INC.
555 WEATHEREND
CASHMERE, WA 98815

Enclosed is the result of your recent request for a Business Record Search. If you have any questions concerning this search, please call the telephone listed below.

BUSINESS & PROFESSIONS DIVISION

MASTER LICENSE SERVICE

TELEPHONE (206) 753-4401

MASTER LICENSE SERVICE

CORPORATE NAME SEARCH

BUS700P4 CNAM 09/14/93 11:20

SEARCH: cascade de_____

SEL: 10

	CORPORATE NAME	UBI	CITY
1)	CASCADE DECKING, INC.	601 381 488	Salem

2) CASCA

3) CASCA

4) CASCA CORPORATE NAME SEARCH DETAIL INFORMATION

5)CASCA – PROFIT CORPORATION

6) CASCA UBI: 600 491 220 Business Status: Active

7) CASCA Corporate Endrs Status: Active

8) CASCA Corp endrs Exp Date: 6/30/94 SOS Inc Date/State: 6/20/83 WA

9) CASCA

10) CASCA CASCADE DENTURE CLINIC, INC.

11) CASCA

12) CASCA RICK MILLER DENTURIST

13) CASCA 5555 WEATHEREND

14) CASCA CASHMERRE WA 98815 0000

MASTER LICENSE SERVICE

TRADE NAME BY UBI SEARCH

TRDU TRD700P2 09/14/93 11:23

UBI: 600 491 220

CORPORATION: CASCADE DENTURE CLINIC, INC.

BUSN MAIL ADDR: 5555 WEATHEREND

CASHMERE WA 98815 0000

Sel: _____

Trade Name(s)	REGSTRD	CANCELED
		10/9/91
1) RICK MILLER DENTURISTS		

MASTER LICENSE SERVICE 09/14/93

11:22.00

IHQP BUS700P9 BUSINESS ENTITY INQUIRY

UBI: 600 491 220 Location: 001 CORPORATION

Business States: A Location Status: A

Owner Name: CASCADE DENTURE CLINIC, INC.

Firm Name: RICK MILLER DENTURIST

Location Address: Mailing Address:

5555 WEATHEREND ST 5555 WEATHEREND ST

CASHMERE WA 98815 CASHMERE WA 98815

Location First Activity Date 10 02 1991

This firm name registered: Y Other tradenames for this UBI: N

MASTER LICENSE SERVICE 09/14/93

11:22:26

INQP 2US700P9 LIST OF ENDORSEMENTS

Ubi: 600 491 220 Location: 001 CORPORATION

Business Status: A Location Status: A

Owner name: CASCADE DENTURE CLINIC, INC.

Firm Name: RICK MILLER DENTURIST

Endorsements For This Location	Origination Date	Expiration Date	Status
UNEMPLOYMENT INSURANCE			T
INDUSTRIAL INSURANCE			T
TAX REGISTRATION			T
TAX REGISTRATION	10 23 1991		A

Appendix P-1

Registration and License Description Sheet

This form describes the registrations and licenses available through the Master License Service (unless otherwise noted) in three sections: Registra5tions, Renewable Registrations & License, and City Business Licenses. **You must complete a master Application and pay the appropriate fees to obtain these registrations and licenses** (emphasis added).

Some licenses indicate that agency approval is required. **You may not begin these business activities until you receive a Registrations & Licenses document listing the required license** (emphasis added because no such document was ever given to "registered denturists).

REGISTRATIONS

These **registrations** are valid as long as you remain in business.

TAX REGISTRATION

No fee

Department of Revenue

You must obtain a **tax registration** if you answer "yes" to any of the questions listed below. A tax registration cannot be transferred to another business.

*Do you plan to gross over $12,000 per year?

*Will you be selling at retail any item or product to another person?

*Will you be repairing, installing, altering, decorating, or improving any item or product for another person (e.g. car repair, construction)?

*Will you engage in a business that is responsible for any other state taxes (e.g. timber, fish, litter, public utility, hazardous substance/waste, etc.)?

INDUSTRIAL INSURANCE

No fee

Department of Labor & Industries

If you employ one or more people, you must apply for

industrial insurance coverage.

TRADE NAME REGISTRATION

$5 PER NAME

Department of Licensing

Any individual or partnership conducting business in Washington under a name other than the full legal name of the owner or owners must **register** a trade name. Corporations, limited partnerships or limited liability companies operating under a name other than the name **registered** with the Office of the Secretary of State must also **register.**

Appendix P-2

D.I. Okamoto
DIRECTOR

State of Washington

DEPARTMENT OF REVENUE
OLYMPIA, WASHINGTON 98504-0090
MS-AX-02

JUNE 05, 1991

BAKO, LASLO G.
DENTURIST OFFICE
9616 NE 195TH CIR #F4
BOTHELL WA 98011

REGISTRATION NO.
c 601 097 906

Dear Business Person:

Every year, the Department of Revenue reviews the reporting history of all **active registered accounts** (emphasis added). We do this to determine if there are accounts who have not had business activity for two consecutive years. Our records show that you have not reported any activity for the past two years. As a result, we are closing your account effective with the date of this letter. This action is being taken to relieve you of the burden of filing tax returns, as well as, to save needless expense.

If you feel your account should remain open, please write to us within 30 days with your explanation. We will then evaluate the explanation and if it is considered appropriate, your account will be immediately reopened without a new **registration** or handling fee.

Please be aware this letter serves as your notification of closure and that any future use of your **tax registration** number for tax purposes is prohibited. Although your account has been closed by the Department, it does not prohibit the Department from auditing your account and assessing any unreported tax.

This closure only pertains to your need to report to the Department of Revenue. It does not affect the status of a corporation, employer or license except **when registration with this Department is a requirement for registration or licensing**

(emphasis added).

Please direct all correspondence to:

Department of Revenue

Taxpayer Account Control

Mailstop AX-02

Olympia, WA 98504-0090

(206) 753-2728 or (206) 753-1951

Sincerely,

Sharon M. Brown, Assistant Director
Taxpayer Account Administration

Appendix P-3

Laslo G. Bako, DDn.
9616 NE 195th Circle, #F4
Bothell, WA 98011
206/481-8510

State of Washington
Department of Revenue
Olympia, WA 98504-0090 MS-AX-02

Taxpayer Account Administration
Registration #: C-601-097-906
Attention: Sharon M. Brown, Assistant Director

Dear Ms. Brown, June 7th, 1991

I received your letter on June 6th, 1991 in which you state that I have not reported any activity in the past two years, and you wish to close my account to relieve me the burden of filing tax returns. In your letter you ask me that if I feel that my account should remain open why don't I give you an explanation. Also you mention that if I resume business activity within two years of the date of your letter – which is June 5th, 1991 – my account will be reopened for a $12.00 handling fee.

I arrived to this state a year ago and I planned to open my office at that time. However due to my divorce at that same time, I was severly cut back

financially. Currently I am working to save money, and yet it is my plan – just as you mention – to be open within two years.

So I am asking you, please keep my account open and this way allow me the chance to start my office as soon as I am ready.

Sincerely your,

Laslo G. Bako, DDn.

Appendix P-4

D.I. OKAMOTO
Director
(206) 753-5540
FAX (206) 586-5543

STATE OF WASHINGTON

DEPARTMENT OF REVENUE

Olympia, Washington 98504-0090 * MS-AX-02

June 27, 1991

Bako Laslo G
Denturist office
9616 NE 195th Cir #F4
Bothell WA 98011

We have received your request response to our recent notice that your account with this agency has been closed.

From the information you have given us it appears that your account should remain open. Your account is being reactivated effective with the date of the closure (June 05, 1991).

If you have questions, please feel free to contact us (206) 753-5534.

Appendix P-4

APPENDIX Q

Rick Miller
5555 Weatherend
Cashmere, Wa. 98815
08-27-96

To Whom It May Concern:

On about January of 94, I was contacted by Eric Hansen at my home. He said that the denturist assoc. was going to run an initiative and it would cost me $10,000.00 at least to get a license. I was then contacted by Gary Fox at my office in Wenatchee and told the same thing. I told Mr. Fox the same that I told Mr. Hansen, that I just opened my office after being closed down for 4 years and going through a divorce and there was no way I could come up with the money. I asked why I had to pay since I had paid dearly fighting for them during the eighty's, and was told that didn't matter, no money, no license.

Around May of 94, Dorothy Jensen, Secretary of the Denturist Assoc. called asking for money she told me the same thing, no money, no license.

I attended a denturist meeting in Ellensberg in May of 94, where Mr. Don Jensen, President of the Washington Denturist Assoc. and Val Charron both said at the meeting that the Assoc. needed money to pay for signatures and everyone was to pay $10,000.00 or no license.

On numerous phone conversations with Mr. Fox and Mr. Hansen. I told them they shouldn't tell people that if they didn't pay, they would not get a license. Also, I told them that Dorothy Jensen was telling people this and if the Dental Assoc. found out about this, we could loose everything. They said they wanted their money back. I told them the right way to do this, and to get rid of future argument from the Dental Assoc. would be to lend the money to the Assoc. of "Citizen for Freedom of Denture Care," then put on educational classes that everyone would have to take, then the Assoc. could pay back the people who donated money. I was told it was none of my

business since I hadn't put up any money. I told them I put up $1,000.00 from my credit card and would not put up any more because what they were doing was wrong.

In August 94, I attended a meeting at Mr. Fox's house in Spokane. I tried to convey my concerns about how Mr. Jensen, Mr. Charron and Mr. Fox, and Dorothy Jensen was soliciting money and again was told to put up or shut up by Mr. Jensen and Mr. Charron. During the meeting, Mr. Jensen, Hansen, and Charron told the membership that if you paid the money ($10,000.00), Mr. Hansen would guarantee you an Indian License which then would guarantee you a state license. If you didn't pay, you would not get a license. After the meeting, Mr. Hansen, Eldred Olsen, Mike Richardson, and myself went to Lake Coeur d'Alene on Gary Fox's boat. Mike and I tried to get Eric Hansen not to let these guys solicit money this way; that it would back-fire. But

still was told, no money, no license. I was then contacted again by Don and Dorothy Jensen and told that if I didn't pay the money, I wouldn't get an Indian License, which would mean I wouldn't pass the State License exam. I told them I already had an Indian License, and I didn't pay for it. If they didn't stop telling people if they didn't pay, no license, that the dentist would use it against us (denturist).

I tried numerous times with Mr. Fox and Mr. Hansen to get them to stop these comments. I even called the Denturist Assoc. Board Member Rodger Mitchell and tried to get him to stop this. He said he had talked to the Board and since he and his partner put up $30,000.00, he agreed – no money, no license. I told him since he couldn't meet the education requirements, buying his license would be the only way he would get one. And then, after the dentist used all this against the denturist, and had the legislation taken away, the Board and Federal

enclave license requirement. I had several phone conversations with Mr. Mitchell about how they could get a license since they had paid all this money. I laughed and asked him what could I do. I tried to tell you. But they finally received their license. How?

Before the dentist amended the initiative, I received a phone call from Mr. Hansen. He told me about what the dentist was doing and if I would use my influence with some legislator. I met him in Skykomish. I told him I told you so and there was nothing I could do. My application for a state license was never answered.

Then, after my attorney wrote a letter to the Health Department, I was told by Mr. Miyahara that I turned in an incomplete application. I asked for an appeal because this wasn't true. To this day, I have had to appeal and no license.

(Documents on request.)

I, Rick Miller, swear the above to be true under the perjury laws of the state of Washington.

Appendix Q-2

Under penalty of perjury as governed by the laws of the state of Washington, I, Keith Allison, do hereby declare this document to be a true and correct copy of the wording of RCW 18.120.010. Prior to the Washington State Department of health becoming active in 1990, the Washington State Department of Licensing was the government entity that regulated health professions in the state of Washington.

(1) The purpose of this chapter is to establish guidelines for the regulation of health professions not licensed or regulated prior to July 24, 1983, and those licensed or regulated health professions which seek to substantially increase their scope of practice: PROVIDED, That the provisions of this chapter are not intended and shall not be construed to: (a) Apply to any regulatory entity created prior to July 24, 1983, except as provided in this chapter: (b) affect the powers and

responsibilities of the superintendent of public instruction or Washington professional educator standards board under RCW 28A.410.2a0 and 28A.410.010; (c) apply to or interfere in any way with the practice of religion or to any kind of treatment by prayer; and (d) apply to any remedial or technical amendments to any statutes which licensed or regulated health professions unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession. Where such a need is identified, the regulation adopted by the state should be set at the least restrictive level consistent with the public interest to be protected.

(2) It is the intent of this chapter that no regulation shall, after July 24, 1983, be imposed upon any health profession except for

the exclusive purpose of protecting the public interest. All bills introduced in the legislature to regulate a health profession for the first time should be reviewed according to the following criteria. A health profession should be regulated by the state only when:

(a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(c) The public cannot be effectively protected by other means in a more cost beneficial manner.

(3) After evaluating the criteria in subsection (2) of this section and considering governmental and societal costs and benefits, if the legislature finds that it is necessary to regulate a health profession not previously regulated by law, the least restrictive alternative method of regulation should be implemented, consistent with the public interest and this section.

(a) Where existing **common law** (emphasis added) and statutory civil actions and criminal prohibitions are not sufficient to eradicate exiting harm, the regulation should provide for stricter civil actions and criminal prosecutions;

(b) Where a service is being performed by individuals involving a hazard to the public health, safety, or welfare, the regulation should impose inspection

requirements and enable an appropriate state agency to enforce violations by injunctive relief in court, including, but not limited to, regulation of the business activity providing the service rather than the employees of the business;

(c) Where the threat to the public health, safety, or economic well-being (economic well being was added by Secretary Bruce Miyahara during his reign as Secretary of The Department of Health) is relatively small as a result of the operation of the health profession, the regulation should implement a system of registration;

(d) Where the consumer may have a substantial basis for relying on the services of a practitioner, the regulation should implement a system of

certification; or

(e) Where apparent that regulation cannot be achieved by means other than licensing, the regulation should implement a system of licensing.

[2005 c 497 Section 219; 1990 c 33 Section 554; 1983 c 168 Section 1.]

Intent – Part headings not law-Effective date-w005 c 497: See notes following RCW 28A.305.011.

Purpose – Statutory references – Severability – 1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Under penalty of perjury as governed by the laws of the State of Washington. I. Keith Allison. do hereby declare this document to be a true and correct copy of the wording of RCW 18.120.020 - Definitions. Prior to the Washington State Department of Health becoming active in 1990, the Washington State Department of Licensing was the government entity that regulated health professions in the state of Washington.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant group" includes any health professional group or organization. any individual. or any other interested party which proposes that any health professional group not presently regulated be regulated or which proposes to substantially increase the scope of practice of the profession.

(2) "Certificate" and "certification" means a

voluntary process by which a statutory regulatory entity grants recognition to an individual who (a) has met certain prerequisite qualifications specified by that regulatory entity; and (b) may assume or use "certified" in the title or designation to perform prescribed health professional tasks.

(3) "Grandfather clause" means a provision in a regulatory statute applicable to practitioners actively engaged in the regulated health profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

(4) "health professions" means and includes the following health and health related licensed or regulated professions and occupations:

Podiatric medicine and surgery under chapter 18.22 RCW; chiropractic under chapter 18.25 RCW; dental hygiene under chapter 18.29 RCW; dentistry under chapter 18.32 RCW; denturism under chapter 18.30 RCW; dispensing opticians under chapter 18.34 RCW; hearing instruments under chapter 18.35 RCW; naturopaths under chapter 18.36A RCW; embalming and funeral directing under chapter 18.39 RCW; midwifery under chapter 18.50 RCW; nursing home administration under chapter 18.52 RCW; optometry under chapters 18.53 and 18.54 RCW; ocularists under chapter 18.55 RCW; osteopathic medicine and surgery under chapters 18.57 and 18.57A RCW; pharmacy under chapters 18.64 and 18.64A RCW; medicine under chapters 18 71 and 18.57A RCW; pharmacy under chapters 18.64A RCW;

medicine under chapters 18.71 and 18.71A RCW; emergency medicine under chapter 18.73 RCW; physical therapy under chapter 18.74 RCW; occupational therapists licensed under chapter 18.59 RCW; respiratory care practitioners licensed under chapter 18.89 RCW; veterinarians and veterinary technicians under chapter 18.92 RCW; health care assistants under chapter 18.135 RCW; massage practitioners under chapter 18.108 RCW; acupuncturists licensed under chapter 18.06 RCW; persons registered under chapter 18.19 RCW; persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW; dietitians and nutritionists certified by chapter 18.138 RCW; radiologic technicians under chapter 18.84 RCW; and nursing assistants registered or certified under chapter

18.88A RCW.

(5) "Inspection" means the periodic examination of practitioners by a state agency in order to ascertain whether the practitioners' occupations is being carried out in a fashion consistent with the public health, safety, and welfare.

(6) "Legislative committees of reference" means the standing legislative committees designated by the respective rules committees of the senate and house of representatives to consider proposed legislation to regulate health professions not previously regulated.

(7) "License," "licensing," and "licensure" mean permission to engage in a health profession which would otherwise be unlawful in the state in the absence of permission. A license is granted to those individuals who meet prerequisite qualifications to perform

prescribed health professional tasks and for the use of a particular title.

(8) "Professional license" means an individual, nontransferable authorization to carry on a health activity based on qualifications which include: (a) Graduation from an accredited or approved program, and (b) acceptable performance on a qualifying examination or series of examinations.

(9) "Practitioner" means an individual who (a) has achieved knowledge and skill by practice, and (b) is actively engaged in a specified health profession.

(10) "Public member" means an individual who is not, and never was, a member of the health profession being regulated or the spouse of a member, or an individual who does not have and never has had a material financial interest in either the rendering of the

health professional service being regulated or an activity directly related to the profession being regulated.

(11) **"Registration: means the formal notification which prior to rendering services, a practitioners shall submit to a state agency setting forth the name and address of the practitioner; the location, nature and operation of the health activity to be practiced; and, if required by the regulatory entity, a description of the service to be provided.** (Emphasis added.)

(12) **"State agency" includes** <u>**every state office, department, board, commission, regulatory entity, and agency of the state, and, where provided by law, programs and activities involving less than the full responsibility of a state agency.**</u>

(Emphasis added.)

[2001 c 251 Section 26; 2000 c 93 Section 15; 1997 c 334 Section 13; 1996 c 178 Section 9. Prior: 1995 c 323 Section 15; 1995 c 1 Section 18 (Initiative Measure No. 607), approved November 8, 1994 sp.s. c 9 Section 718; 1989 c 300 Section 14; prior: 1988 c 277 Section 12; 1988 c 267 Section 21; prior 1987 c 512 Section 21; 1987 c 447 Section 17; 1987 c 412 Section 14; prior: 1985 c 326 Section 28; 1985 c 117 Section 3; prior: 1984 c 279 Section 57; 1984 c 9 Section 18; 1983 c 168 Section 2.]

Severability – 2001 c 251: See RCW 18.225.900

Effective dates – 1997 c 334: See note following RCW 18.89.010

Effective date – 1996 c 178: See note following RCW 18.35.110

Short title – Severability – 1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901

Severability – headings and captions not law -

Effective date – 1994 sp.s.c 9: See RCW 18.79.900 through 18.79.902

Severability – 1987 c. 512: See RCW 18.19.901

Severability – 1987 c 415: See RCW 18.89.901

Effective date – Severability – 1987 c 412: See RCW 18.84.901 and 18.84.902

Severability – 1984 c 279Z: See RCW 18.130.901

Severability – 1984 c 9Z: See RCW 18.59.905

Appendix Q-3

Under penalty of perjury as governed by the laws of the State of Washington, I, Keith Allison, do hereby declare this document to be a true and correct copy of the wording of RCW 18.122.010. Prior to the Washington State Department of Health becoming active in 1990, the Washington State Department of Licensing was the government entity that regulated health professions in the state of Washington.

The legislature takes note of the burgeoning number of bills proposed to regulate new health and health related professions and occupations. The legislature further recognizes the number of allied health professions seeking independent practice. Potentially at least one hundred forty-five discrete health professions and occupations are recognized nationally, with at least two hundred fifty secondary job classification. A uniform and streamlined credentialing process needs to be established to

permit the department of health to administer the health professional regulatory programs in the most cost-effective accountable, and uniform manner. The public interest will be served by establishing uniform administrative provisions for the regulated professions under the jurisdiction of the department of health regulated after July 26. 1987.

[1989 1st ex.s. c 9 Section 306; 1987 c 150 Section 61]

Effective date – Severability – 1989 1st ex.s.c 9: See RCW 43.70.910 and 43.70.920

Appendix Q-4

Under penalty of perjury as governed by the laws of the State of Washington, I, Keith Allison, do hereby declare this document to be a true and correct copy of RCW 18.122.020 – Definitions. Prior to the Washington State Department of Health becoming active in 1990, the Washington State Department of Licensing was the government entity that regulated health professions in the state of Washington.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) To "credential" means to license, certify, or register an applicant.

(2) "Department" means the department of health.

(3) "Secretary" means the secretary of health or the secretary's designee.

(4) "Health profession: Means a profession

providing health services regulated under the laws of this state and under which laws this statute is specifically referenced.

(5) "Credential" means the license, certificate, or registration issue to a person.

[1989 ast ex. s. c 9 Section 307; 1987 c 150 Section 62.]

Effective date – Severability – 1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920

Appendix Q-5

Under penalty of perjury as governed by the laws of the State of Washington, I Keith Allison, do hereby declare this document to be a true and correct copy of the wording of RCW 18.122.030 on March 2008. Prior to the Department of Health becoming active in 1990, the Washington State Department of Licensing was the government entity that regulated health professions in the state of Washington

(1) The three levels of professional credentialing as defined in chapter 18.120 RCW are:

(a) Registration, which is the least restrictive, and requires formal notification of the department of health identifying the practitioner, and does not require qualifying examinations;

(b) Certification, which is a voluntary process recognizing an individual who qualifies by examination and meets established educational prerequisites, and which protects the title of practice;

and

(c) Licensure which is the most restrictive and requires qualification by examination and educational prerequisites of a practitioner whose title is protected and whose scope of practice is restricted to only those licensed.

(2) No person may practice or represent oneself as a practitioner of a health profession by use of any title or description of services without being registered to practice by the department of health, unless otherwise exempted by this chapter.

(3) No person may represent oneself as certified or use any title or description of services without applying for certification, meeting the required qualifications, and being certified by the department of health unless otherwise exempted by this chapter.

(4) No person may represent oneself as licensed, use any title or description of services, or engage in any practice without applying for licensure, meeting the

required qualification, and being licensed by the department of health, unless otherwise exempted by this chapter.

[1989 1st ex.s.c 9 Section 308; 1987 c 150 Section 63.]

Appendix Q-6

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF YAKIMA

STATE OF WASHINGTON, ON THE RELATION OF MARY G. FAULK, DIRECTOR, DEPARTMENT OF LICENSING,	)	No. 88-2-01519-7
Plaintiff,	)	Declaration of Rick Miller
Vs.	)	
KEITH ALLISON	)	
Defendant	)	

Attached is the declaration of Rick Miller which is filed as an exhibit in defendants motion to vacate his injunction in the proceeding set for September 29, 1989

Respectfully submitted this 25th day of September 1989.

Keith Allison,

Defendant

JHK/F.T.C.

I, Rick Miller, on this the 24th day of September 1989, do solemnly swear and attest to be true that on the 21st day of August 1989, at approximately 9:10 A.m., Keith Allison and I met with a Mr. Dean Foster from Governor Booth Gardners Office. The topic of discussion at the meeting was the denturist issue in the State of Washington.

During our conversation with Mr. Foster, he informed both Mr. Allison and myself that **"he knew that the denturists who were being harassed by the Dental Disciplinary Board were in fact legal, but there was little, if anything, the Governors Office could do to assist the denturists in getting the Dental Disciplinary Board to leave the denturists alone in the State of Washington."** Mr. Foster further stated, **the reason the Governor would not do anything to help the denturists was because of the large amounts of money that dentistry had to spend**

with politicians to be certain that any and all denturist legislation submitted to legislative bodies was defeated." Furthermore, Mr. Foster stated, **"It would be political suicide to go against dentistry's money and desires even though the denturists were already legal in the State of Washington." "After all, look what happened to Theresa Aragon, the past director of the Department of Licensing when she wanted the Medical Disciplinary Board to function the way it was set up and intended to function; that being in the best interest of the public, not the best interest of the Medical Board and their members."**

9-24-89

555 Weatherend Dr., Cashmere, WA 98815

Rick Miller

Appendix Q-7

Under the penalty of perjury, as governed by the laws of the State of Washington, I/we the undersigned, swear the following statement to be true and correct.

On Sunday, July 18, 1993, I attended a denturist meeting in Yakima, Washington, at which I personally observed/heard Dorothy Jensen speaking to the assembled group of denturists. At the meeting, I/we heard Dorothy Jensen make the following statement. "We are going to run an Initiative to license denturists in the state of Washington. We expect everyone who wants to become a licensed denturist, to donate $10,000.00 to the Initiative. And, in order to belong to our association, you will be required to pay monthly dues of $1,000.00 per month. Anyone who does not contribute the required $10,000.00 to the Initiative will not be allowed to be a member of our association, or become a licensed denturist in the state of

Washington.

Jacklin Allison 4/11/98 Darla Dawn Allison 4/11/98

Donald Way _____ Lila Way 4/12/98

Douglas Way 4/12/198 Karla Way 4/12/98

Stanley Way 4/11/98

Appendix Q-8

Allen McDonald
301 Clemansview Rd.
Selah. Washington 98942

August 11. 1998

Department of Health
Kirby Putscher,
Denturist program Manager
P.O. Box 47867
Olympia. Washington 98504

RE: Application for Denturist License by Examination or Dendorsement

Dear Kirby:

Thank you for your clarification of the misprints, RCW 18.19 AND WAC 246-810 in Section 7 of the Denturists Application. I have corrected them to reflect RCW 18.30 AND WAC 246-812. Denturist Act and Rules.

Your answer to my question regarding the meaning of the language contained in Section 2., and the references to the: :State of Washington," "registrations" or "grandfathering;" referred to any of those individuals who "Qualified" as registrants and who registered by conforming their conduct to

representations made by the government agencies of the State of Washington, seemed perplexed, rather than confident. ["Qualified," "Means the members of the Applicant Denturist Group who responded to the old SHCC or "Statewide Health Coordinating Council," and went to Idaho State University and received their "ACCREDITED Academic Educational Pre-requisites, 1985"]

Perhaps it was before your time, so I'll go back. The state legislative response to FEDERAL REQUIREMENTS (Department of Health and Human Services) Chapter 6A Public Health Service, Part-C State Health Planning and Development. 300m.. 300m-1, 300m-2, 300m-3, et seq... for states to continue to receive health care funds

THE RESULT..."AGENCY," Department of Revenue/Licensing; Chapter 18.120 .. REGULATION OF HEALTH PROFESSIONS; Chapter 18.122...UNIFORM ADMINISTRATIVE

PROVISIONS; Chapter 18.130...UNIFORM DISCIPLINARY ACT. in para material.

"DENTISTRY"...AMENDED BY REFERENCE, rcw 18.32.005

January 21, 1987 – SHCC issued its rationale. Section 7. "We found no evidence that anyone has ever been harmed by denturists.

DENTURISTS Register with the Department of Licensing. 18.122.030 (1987 Edition). Some of these denturists specifically asked the Departmetn of Licensing if a description of their "Scope of Practice" would be approved for a "Business License Registration." Answer, "If its not legal, you won't get one." [Every "Qualified" denturist who applied was sent a "Master Business License," to wit: ..."I certify that the above entity is duly registered and is licensed to conduct business....;" signed by Teresa Aragon, Director, Department of Licensing.

ATTORNEY GENERAL begins campaign of litigious

attrition against "Properly Registered Denturists. Practicing denturists targeted for extinction by AAG John Keith who sat on the Dental Disciplinary Board with the person who is now the "Acting Assistant Secretary of the Department of Health, Mr. Ron Weaver. I believe AAG John Keith still occupies a seat on the Dental Disciplinary Board.

Some Superior Court Judges complied with AAG John Keith's (politically biased) demands and found against targeted denturists. Other judges ordered evidentiary hearings. The state never complied with those orders and never sued those denturists again. (Clark court, Spokane; Yule court, Franklin County.)

July 1, 1989, effective date of the Department of health. Transfer of powers and Duties from DSHS. SHCC became the State of Health. RCW 43.).080; Transfer of Powers and Duties from the Department of Licensing to the Department of Health, RCW 43.70.220...."More specifically, the health professions

regulatory program and SERVICES as presently administered by the department of licensing are hereby transferred to the department of health." (Emphasis mine)

The maintaining of the lists or record of registered health professions is a "service."

The record of "Registered Denturists" was never transferred along with the other registered health professions. Those un-transferred registrations can still be transferred.

Mr. Sherm Cox, D.D.S., Mr. Ron Weaver, Mary Falk, new Director of the Department of Licensing and others in that department and the Department of health have known all along that the denturists records were never transferred. The AG's office has been able to manufacture, with the necessary assistance of a politically motivated lower court judiciary, a set of bogus positive law decisions that can be vanquished at tial in a court of proper venue

There is no statute of limitation on this kind of mischief.

Dear gentleperson, please bear with me as I continue.

As an example of what can happen in the courts, I simply point out the return of the Denture Technology Boards powers and certain language that the legislature felt at odds with, that was returned to the law passed by the people (I-607). The State Supreme Court affirmed the law as voted by the people.

The lack of records transfer notwithstanding, "Qualified Registered Denturists," are in compliance with I-607 (RCW 18.30.040 EXCLUSIONS FROM CHAPTER.

NEW SECTION. Sec 5 as being..."registered under other laws of this state and who is performing services within the authorized scope of practice." In case you hadn't noticed, the word "other" has been

inserted where the word "the" is in 18.122.040, EXEMPTIONS, Section (1) (1987 Ed.)

Representations regarding lack of a grandfather clause in the voters pamphlet notwithstanding, the people voted the law in, not the arguments in the voters pamphlet. Wisdom of the process notwithstanding.

March 30, 1995, meeting minutes; 3. ISSUANCE OF TEMPORARY LICENSES; AAG Jim Bruselback provided confidential written advice on the following: Issuance of temporary licenses to persons from any state or federal enclave, including an Indian tribe, or a "master Business License" for the Practice of Denturism issued from the Department of Licensing. The Board went into closed session to discuss the issue with the AAG; upon reconvening, no further action was taken.

REGULATION OF HEALTH PROFESSIONS – UNIFORM DISCIPLINARY ACT RCW 18.130 (1987

Ed.)

18.130.010 INTENT. It is the intent of the legislature to strengthen and consolidate disciplinary procedures for the licensed health and health-related professions and businesses by providing a uniform disciplinary act with standardized procedures for the enforcement of laws the purpose of which is to assure the public of the adequacy of professional competence and conduct in the healing arts.

It is also the intent of the legislature that all health and health-related professions newly credentialed by the state come under the uniform disciplinary act...

RCW 18.130.020 Definitions...Section (1) "Disciplining Authority" ... Subsection © the agency or board having the authority to take disciplinary actions against a holder of. or applicant for. a professional or BUSINESS LICENSE upon a finding of a violation of this chapter...(Emphasis is mine)

The "agency" was the Department of Licensing

"BUSINESS LICENSE" IS AN AFFIDAVIT OF REGISTRATION, LICENSURE.

This substantive law was relied upon at that time.

So perhaps now you will be able to rephrase your answer to me in more positive tones when I ask, "Does the language in Section 2. PREVIOUS LICENSURE. apply to pre I-607 "QUALIFIED REGISTRANTS?"

I was among that group of individuals complied with the educational pre-requisites and registered according to the representation of this states' government 'representatives' and 'laws'.

I have been placed under duress by the Department of Health and its legal minions and cannot provide or pay such exorbitant fees as are demanded by this administrative denturist program.

At this time I'm unable to include the sum of $1,000.00 ad demanded.

I am requesting an interim or temporary document

from the Department of Health or the Denture Technology Board that will allow me to work under authority in the denturist profession for 30 months (2 years 6 months). This is the absolute minimum time I'll need to recover enough from the financial damage done to me by the state.

I have over time, continued to collect more case material on this over all issue and will continue to do so.

Please respond to my request by bringing it to discussion at a Denture Technology Board meeting calendar permitting. Please inform me in writing about what inquiries or decisions you will have made regarding my request.

This letter along with supporting attachments is numbered as part of the application.

Thank you for your kind attention.

Allen McDonald

Appendix Q-10

Allen McDonald
3304 Main Street
Union Gap. WA 98904

) State of Washington

) County of Yakima

To Whom It May concern:

I solemnly aver that the following is a true account. I'm a practicing denturist, registered under The Health Professions Regulation Act of 1983, (RCW 18.120). My registration predates the formation of the Department of Health. My dental career spans 34 years. My records are on file in the Denturist Component of the Department of Health. I have been denied reciprocal licensure.

I contacted Mr. Gary Fox in his Spokane office by phone, to discuss reactions that I had pertaining to the Denturist Initiative; this was in the later part of March 1994.

Mr. Fox answered his phone, we greeted in good will. I informed him that I had questions and misgivings about how the initiative was written.

I said, "Gary, where it says, 'least restrictive entry,' after that, licensure is inserted as least restrictive."

"That doesn't make sense, because 18.120 says registration is the least restrictive."

He said, "The association had decided that a professional license was more like property and more difficult to take away." I wanted to argue the point more, but didn't.

My next question was about them putting a dentist on the denturist board. I said, "Why did you guys put a dentist on the board?" And in the same breath added, "I think you've built in your own destruction." To which Mr. Fox replied, "Al, we decided that as a consumer oriented issue, the public would more likely sign the petitions and vote it in." I realized I was becoming agitated and went on to ask my next question.

"Gary, what is this Federal enclave business?" He said, those people who have an Indian license will get

a state license and will also be the first ones to sit on the board." He went on to say, they will also administer the examinations to the other denturists who qualify."

I was already aware of the amount of money the Denturist Association was demanding to guarantee licensure, so I continued the conversation a bit more by saying, "I can't come up with the $10,000.00, so I guess I'd better end this call on a cordial note and say good luck to you and your endeavor."

When I said my farewell, Mr. Fox followed up by saying, "Well, its what the association wants." I replied, "I understand, Gary, good-by now."

I hung up the receiver somewhat frustrated and depressed.

9/7/96

Allen McDonald

Notarized on September 8th, 1996 by Mary Ann Paulson

To Whom It May Concern:

Under the perjury laws of the State of Washington, I, Douglas Way, do hereby aver the following statement to be true and factual

During, or about the month of Marc. 1994, I was present during a telephone (speaker phone) conversation between Mr. Gary Fox and Keith Allison. The subject of the conversation with Mr. Fox, concerned a proposal by Mr. Fox and other members of the Washington Denturist Association, to implement an Initiative (I-607), that would propose full licensure status for denturists practicing in the state of Washington.

The substance of the conversation dealt with Mr. Fox's and other members of the Denturist Associations demands that anyone who wanted to receive a State Denturist License when their initiative passed, would have to contribute a minimum of $10,000.00 to their initiative plan. Mr.

Fox stated the $10,000.00 donation would allow the donor to take the National Indian Denturist Licensing Examination. Then, after they successfully completed the examination, they would be guaranteed to receive a State Denturist License when the Initiative was voted into effect.

Keith Allison mentioned to Mr. Fox, that he had been approached by Bruce and Wanda Anderson, to turn in his Nooksack Indian Denturist License in exchange for the new national Indian Denturist License. Mr. Fox stated the new National License would be valid only if signed by an Indian Chief, and that Eric Hansen would not allow the Chief of the Nooksack Tribe to sign any new licenses until the Citizens For Affordable Dentures Committee had received a $10,000.00 donation to their initiative.

There was further conversation regarding the lack of ethics of those involved in the initiative, and attempted extortion was mentioned by Keith Allison.

Mr. Fox did not see it that way, he stated "this way, we are guaranteed to get what we want."

Mr. Fox also informed Keith Allison that if he, or anyone else refused to go along and contribute the required $10,000.00, they would not be allowed to obtain a State Denturist License when the initiative became law.

Douglas Way – 9-6-96

Karolyn Smith, Notary 9-6-96

Appendix Q-13

Under penalty of perjury as governed by the laws of the State of Washington, I, Keith Allison, do hereby make the following statement and aver it to be true to the best of my knowledge.

During the late 1980's or early 1990's, I was subpoenaed to appear in the court of Judge F. James Gavin for the purpose of defending myself against the state taking action to place a Permanent Injunction against me. I knew that Judge Gavin had been approached off the bench several months earlier, and I therefore felt that any defense I might put up would be an exercise in futility. This proved to be the case.

When Assistant Attorney General John H. Keith presented the court with a copy of the Permanent Injunction, Judge Gavin ordered John H. Keith to change the wording of a portion of that injunction, and he did. He drew lines through the portion the judge wanted amended, wrote in felt pen

what the judge wanted changed, then instructed me to initial the change and sign the document.

After reading the document, I initialed the area that had been changed, and signed the document. John H. Keith told me he was going to have the document duplicated, and left the court. About 10 minutes later, he returned and said, "the copy machine is broken. I'll have to send you a copy from Olympia. Not having any choice in the matter, I departed the court.

A week or two later, I received a copy of the Permanent Injunction from John H. Keith and began re-reading the document. When I got to the portion where John H. Keith had penned in the change ordered by Judge Gavin, I found that someone had made another change in the wording of the Permanent Injunction just a few lines above where I had initialed the changes John H. Keith had made in Judge Gavins' court.

I know the changes were made at different times, because the change above was not there when I initialed the lower change. Also, had the upper change been there when John H. Keith had me initial the lower one, he would have also required me to initial the upper change.

Keith Allison – 25 February 99

Appendix Q-13

ARNOLD E. KING Aug. 22, 1996

Box 205

Reardan, WA 99029

To whom it may concern,

These are some of my observations and complaints regarding the Denturist initiative and testing of the Denturist exam and related subjects.

1. I attended several of the WDA (Washington Denturist Association) in Ellensberg in the summer of 1994. I was told by Gary Fox and Gary Hanson that I needed to give $10,000 to the WDA and they would guarantee that I would receive a Denturist License, as they would have a member on the board. Also, I heard the remark that several had passed the Indian Denturity Exam as they had gotten access to the answers.

2. I took the classes at Bates Technical College for three months and only missed two classes. I observed the following: Instances of people who were not

attending classes, but whose names appeared on the record. Toward the end, Joe Rosendahl, made the statement that he had been keeping his own record and it didn't match. Whenever there were certificates passed out, someone was always sticking in a certificate of someone who hadn't been to the classes for Mr. Rosendahl to sign. We had to have the certificates to be eligible to take the Denturity exam by the state. I heard Val Charron making arrangements with members of the WDA to meet at his place of business to go over the questions and answers that would be on the written exam and the procedures that would be used in the practical exam. 3. Mr. Rosendahl was to be given all the topics that would be given on the exams, and even tho I obtained all the paper work for all the classes, even the ones I missed, there were questions on the tests that weren't covered. At testing time, we were told by the state examiner that we could appeal any adverse

testing, and on the practical, it was to be given by an independent Dentist to go over the results. I failed the Practical Exam, even tho the examiners at the time told my patient that her set of dentures were the best they had seen that day and on only one try. She observed that her husband would be very happy as they were just like her natural teeth. Her teeth balanced in lateral movement both sides and in protrusive. Her lip line was the same as before.
I made an appeal, traveled to Olympia with my necessary equipment on the date the state set up, and then was told that they wouldn't even go over my practical, plus would not give me the set of dentures I had worked on. I had promised my patient a new set, so I had to start from scratch again. I made her a set of dentures in three visits. Impressions, try in, and finish. This was in the fall of 1994, and she did not have to come back for even one adjustment.

I believe the initiative was well thought out and worded. It was voted by a large majority of the people of the state. but the state through the Department of Health has gutted the initiative by taking out the grandfather clause. The license fee is exorbitant compared to other health professions.

Sincerely,

Arnold E. King

Appendix Q-14

Susan M. King
S 2419 Inland Empire Way
Spokane, Wa 99224
08-26-96

To whom it may concern:

I Susan M. King in the summer of 94 had lunch with Gary Fox and Claude A. Edlin at Arby's on 3rd in Spokane, Wa.

The conversation was about the denturist Initiative I-607.

Gary Fox said the people who wanted to get licensed, unless they put up the 10,000 to secure signatures for the initiative wouldn't be eligible to take the denturist exam because they would have one or more of the one's who had put up the 10,000 on the state board that would determine who would get licensed. Claude at this point directly asked if he didn't put up the 10,000 he wouldn't be licensed. Gary Fox said yes.

Claude stated he didn't think that was ethically or morally right that they should try and make

licensing exclusionary to just a few who had put up the money to secure licensing and for that reason he would not be part of it.

The conversation became a little heated so we left.

Sincerely:

Susan M. King

Appendix Q-15

C.K. Edlin
8122 ½ E. Sprague
Spokane, WA 99212-2912

September 4, 1996

To Whom It May Concern:

In the latter part of September, 1994, I had a telephone conversation with Ann Fox, Gary Fox's wife. We were discussing our husband's profession (denturist), and the upcoming denturist initiative campaign. We often talked about this issue. With both our husbands belonging to the Washington State Denturist Association, we had great concerns about our futures and the amount of money that we had already spent and would have to spend. At this point in the conversation, she asked me what Claude was doing about putting up $10,000.00 or more for the initiative and securing a license. I told her at that time I wasn't sure what Claude was going to do because we did not have $10,000.00 to put in. She said that Gary was going to put in $10,000.00 and

anyone that planned to be licensed in Washington would have to put it up or face not getting licensed, because they would control the Board that would determine who would be licensed.

Sincerely

Cheryl K. Edlin, C.D.T.

Appendix Q-16

Under penalty of perjury as governed by the laws of The State of Washington, I, Jacklin Allison, do make the following statement.

On or about 16 July 1995, I, Jacklin Allison applied for a Reciprocal Denturist License from the Department of Health, based upon my prior registration under the provisions of RCW's 18.120 and 18.122, commonly known as the Health Professions Regulations Act.

The Washington State Denture Technology Board refused my application, because I had refused to go along with their attempts to extort $10,000.00 from practicing denturists in this state. At a meeting next door to the SEATAC Hotel, where I handed in my application to Representative Mary Skinner, Department of Health employee Ron Weaver, Assistant Attorney General William Williams, and House Health Committee advisor John Welsh, I was informed by Mr. Weaver, that the Denture

Technology Board would not accept my application. When he was asked how he knew that, he said nothing.

Knowing what I do about the corruption involved in the Denturist Licensing law, RCW 18.30, it was apparent to me that the members of the board, Gary Fox and Eric Hansen, would follow through with their prior threats to see to it that "anyone who refused to pay $10,000.00, will not be able to get a license after I-607 passes."

Because I knew of the attempted extortion and other corrupt activity of government employees of the State of Washington, I made no further attempts to obtain a Washington State Denturist License.

Jacklin Allison - Sep. 22, 1998

Appendix Q-17

Under the perjury laws of the State of Washington and the State of Louisiana, I, E. Robbie Rockwell, a resident and citizen of the State of Louisiana, do hereby freely and knowingly aver the following statements to be true and correct. The conversations I am about to refer to, all occurred during the latter part of 1994 and the early part of 1995.

My name is E. Robbie Rockwell, and before moving back to Louisiana where I now reside, I worked for Gary Fox in Fox's Spokane Denture Clinic, S. 1723 Ray Street, Spokane, Washington. My period of employment with Mr. Gary Fox covered a period of 5 years and 1 month, from June 1990 through July 1995.

During this time, Mr. Fox and his fellow members and officers of the Washington State Denturist Association, including, but not limited to, Mr. Chet Charron, owner of Northwest Dental

Center, 725 St. Helena, Tacoma, Washington. Mr. Kurt Roehl, owner of Parkland Dental health Center, 161 South 112th, Tacoma, Washington and Mr. George "Buddy" White, owner of Denture Services, 5721 20th Avenue N.W., Seattle, Washington, were in close telephonic and personal conversation regarding $10,000.00 contributions to Initiative 607 (I-607), the so called Denturist Licensure Act. During these conversations I became cognizant of, each party strongly implied and confidentially indicated, that "those people who could, and did, donate $10,000.00 to I-607, would be guaranteed a Washington State Denturist License."

The $10,000.00 "donation," was their primary focus, they constantly spoke about "getting the money." Mr. Fox and his associates within the Washington State Denturist Association, pointedly remarked, that "those people who donated the $10,000.00 would be in on the ground floor of the

association, and would be able to set things up the way they wanted it." As for those who refused to donate $10,000.00 to I-607, "they would find themselves on the outside, with no voice about anything." Mr. Fox and his associates within the Washington State Denturist Association also commented, "those who did not contribute to I-607, would be eliminated from the denturist profession all together."

During the period of these conversations between Mr. Fox and members of the Washington State Denturist Association, Mr. Fox specifically told me, "if I too could come up with the $10,000.00 donation to I-607, I too could be guaranteed a place in the association." He also stated, "I could possibly be licensed under an umbrella clause through his license, since I worked for him."

During another conversation, Mr. Fox further stated, that "Claude Edlin (A New You Denture

Clinic, 1716 Ash, Spokane, Washington), may also be able to fit under some "umbrella clause" through Mr. Fox's Washington State License." Mr. Fox went on to state, "Claude could possibly get his license that way."

E. Robbie Rockwell 7-11-97

Cynthia B. Reaux, Notary 7-11-97

Appendix Q-18

On or before Sept. 15, 1994, in a telephone conversation with Mrs. Dorothy Jensen, who was the Secretary of the Washington Denturist Association, she told me that the only way that my son and myself would qualify to take the test and become members of the association would be to pay $10.000 dollars apiece to do so. I told her that we were already members of the Association. She said that the Association had been reformed and we were no longer members. She also informed me that without the $10.000 we wouldn't qualify to take the test. I went to the first meeting in Jan. 1995 and also the second one in Feb. 1995. It was in this meeting the Board had stated that they alone would set the qualification for testing. I then new that without previous obligations having been met we wouldn't pass the test no matter what we scored. I also found out after the meeting that they were going to come and close my business in Marysville because Mr. and

Mrs. Jensen wanted the place I was in. After having open heart surgery in Jan. 1995 (I was out of the hospital 3 days before the second meeting), I chose not to fight the issue and came back to Texas on March 10, 1995. Now I am disabled and on disability. By doing all of this the State of Washington has deprived my son and I of earnings of at least $750,000 a year or more as a registered denturist under RCW 18.120.

Thank You, Kenneth Pitts and Richard Pits

N. Moriri-Andani, Notary Public State of Texas

Appendix Q-19

REGISTRATIONS AND LICENSES

State of
Washington

Unified Business Id: 601 384 861
Business Id: 001
Location: 0001

Organization Type
Partnership

PITTS & PITTS
PITTS & PITTS DENTURE SERVICE
1818 GROVE ST
MARYSVILLE, WA 98270

TAX REGISTRATION

PARTNERS:
KENNETY HARVEY PITTS

REGISTERED TRADE NAMES:
PITTS DENTAL SERVICE

Appendix Q-19-1

STATE OF WASHINGTON

DEPARTMENT OF HEALTH

BOARD OF DENTURE TECHNOLOGY

In Re the Application of The Denturist License of:	)
	) No. 99-03-B-1026DN
CLAUDE EDLIN,	)
	)
Respondent.	)
	)
In the Matter of the Application for a License To Practice Denture Technology of:	)
	) No. 98-12-B-1026DN
	)
	)
ALLEN P. McDonald	)
	)
Respondent.	)

TRANSCRIPT OF PROCEEDINGS – 1/12/00
(Afternoon Session

BE IT REMEMBERED that on the 12th day of January, 2000, at 9:00 a.m., at the Melbourne Tower, 1511 3rd Avenue, Room 314, Seattle, Washington, before Presiding Officer Arthur E. Debusschere, the following proceedings were had, to wit:

REPRESENTING the State of Washington was Laura L. Wulf, Assistant Attorney General

Office of the Attorney General, 905 Plum Street, Bldg. 3, Olympia, Washington, 98504-0109

REPRESENTING the Licensees was J.J. Sandlin, Attorney at Law, 618 Railroad Avenue, Suites E & F, Zillah, Washington 98953.

This examination concerning Claude Edlin's failure of the examination?

A No, I didn't.

Q Did you become aware that Claude Edlin had failed the examination?

A Not until later.

Q When later?

A I don't remember. I just know it was later.

Q How long after the examination was it?

A I don't remember.

Q Was it the same year?

A I believe it was; I just don't remember exactly when I found out that he didn't pass the exam.

Q How did you find out that he didn't pass the exam?

A I don't remember, I don't even remember who told me; I don't remember if it was even Claude who told me or—I don't remember who told me.

Q Well, now, Claude Edlin and you were both involved in this litigation in Spokane County, weren't you?

A Yes, we were; if you're speaking about the temporary injunction?

Q Yes, and you and Claude Edlin had been practicing denturitry under RCW 18.120, the registration procedure; is that correct?

A Well, I believed that we could practice under that at that time, yes.

Q And you had filed your Master Business License and you had described your scope of work under the Master Business License pursuant to RCW 18.120 as denturism; is that right?

A Right

Q And to your knowledge so had Claude Edlin; is

that right?

A Right.

Q And so in the lawsuit the Department of—well, let's see, it would be the Department of Licensing at that time, wasn't it, had filed an action saying you were practicing dentistry; is that right?

A Yes.

Q And the court, Judge Harold Clark allowed you under temporary orders to continue to provide services to a limited degree; is that right?

A Yes

Q And then the Department of Licensing never did follow through on that lawsuit and have a trial, did they?

A No, they didn't.

Q So all the way up until I-607 you practiced in Spokane county under the auspices of those temporary orders issued by Judge Harold Clark; is that right?

A Yes.

Q In I-607 there's some language under as I recall 18.30.040 which lists various exceptions to the requirement for licensure pursuant to the statutes and licensure pursuant to the examination; are you aware of that?

A I know there's some limitations on there but I couldn't tell you right now what they are because I don't have them in front of me.

Q Okay, you didn't participate in any of the language that was proposed in I-607 did you?

A Yes, I did.

Q Oh, you did; well, what about the Federal Enclave language, was that designed so the denturists who had been licensed by the Nooksack Indian tribe could then come in under licensure by endorsement?

A I think the enclave thing was originally put in there by Rick Miller.

Q Oh, it was, by Rick Miller, well, I guess then that

Rick Miller helped put the text in for I-607 along with the rest of you, huh?

A Well, there was a lot of people that had a lot of input on that and so that initiative used was a part of a bill that was put together by a lot of different people. Rick Miller was even involved in it. There was a number of people who were involved in it.

Q Sure. Attorney Dan Raas out of Bellingham was involved, wasn't he?

A I don't know.

Q How about Eric Hansen, he was involved, wasn't he?

A Sure.

Q And then the Nooksack Tribal lawyer, Jerry somebody, right?

A I don't know him.

Q Okay. Well, you were involved in preparing the text weren't you?

A Yes.

Q And then Rick Miller was involved in preparing the text as you say.

A He was involved because we used the same bill that was used at the legislature.

Q In other words, prior proposals which were drafted in part by Rick Miller; is that right?

A Yes.

Q so then the Federal Enclave language came into this I-607 through the efforts of Rick Miller; is that what you're telling me?

A I believe Rick was the one that first originated doing that, yea. I'm not positive but I believe he was. I'm not, you know.

Q so then Claude Edlin, a conversation at Arby's restaurant. Susan King was present, conversation became heated. Claude Edlin walked out after a confrontation with you; does that refresh your memory?

A I don't remember it. I never – I don't ever

remember Claude getting angry at me or anything, ever.

Q do you remember Claude Edlin ever telling you I'm not going to pay the $10,000 and I think it's wrong that I have to pay that before I get licensed or words to that effect?

A No. I don't remember that, either.

Q You do know Susan King, don't you?

A Yes. I do.

Q Do you know where she is now?

A No, I don't; she was here looking for a job a few months or so ago.

Q Oh, that's right, she applied for a job with you, didn't she?

A Yes.

Q And so when you say you don't remember that meeting it may have happened, you just can't recall today?

A I don't think it happened. I don't ever remember

Claude ever being angry with me.

Q All right; well, maybe I overspoke. Do you remember any kind of meting at a fast food restaurant where you and Claude and Susan King went to lunch?

A I'm sure there's times when me and Claude and Susan went to lunch, but I don't remember any one particular time of it because she worked with him and we went to lunch together and I don't remember, you know, any one particular meeting.

Q Do you remember any such lunch meeting where the issue of paying money to the Washington Denturist Association for help in the initiative campaign was discussed with Claude Edlin?

A Well, we were always discussing trying to get people to donate money.

Q Claude Edlin told you during these always discussions that he wasn't going to do it or words to that effect, didn't he?

A Not that I recall.

Q Claude Edlin told you that he didn't have the money to spend $10,000 for contributions or words like that didn't he?

A No, not that I recall.

Q Did Claude Edlin ever discuss with you his opinion that because he hadn't paid the $10,000 he wasn't going to be able to be a licensed denturist?

A No.

Q Have you ever been interviewed by any state official as to whether or not you participated in any form of requirement that denture applicants pay $10,000 or they would not be favorably treated for application?

A No.

Q For licensure, excuse me.

A No.

Q So nobody's ever inquired to you about that issue?

A No.

Q Do you know Dave Magby?

A Dave Magby; no, I don't know him.

Q So no investigator with either the Department of Health or the Board of Denture Technology has ever approached you concerning this issue; is that correct?

A No.

Q Have you ever been approached by any representative of the Attorney General's Office concerning this issue?

A Not until now.

Q Well, the approach now was because they were representing you as a member of the Board of Denture Technology; correct?

A right.

Q So on Claude Edlin's examination, on the practical, you were an examiner for his practical at least in one portion; is that correct?

A Yeah, on the patient charting.

Q On the patient charting; is that correct?

A Yes.

Q did he pass the patient charting?

A I don't remember what score he got, it's been too long ago.

Q Did you give a score on that portion?

A Yes, I did.

Q And who were the other denturist examiners that day besides you and Eric Hansen?

A I believe Herminia.

Q Herminia Subaran?

A I guess that was it.

Q Okay. So then if you withdrew from any further grading of Claude Edlin's examination, the only other denturist examiners who would have examined him for his practical exam would have been either Eric Hansen or Herminia Subaran: is that right?

A I guess so.

Q Well, that's reasonably correct, isn't it?

A Reasonably correct: I don't think we had a fourth

examiner at that time.

Q By the way, were you there during the written examination phase?

A No, I wasn't.

Q Was Eric Hansen that day?

A I do not know.

Q Have you had any discussions at all of any kind or nature with Claude Edlin about his licensure applications?

A His applications?

Q Yes, his applications for licensure in the State of Washington.

A No.

Q Have you as a member of the Board of Denture Technology ever seen his license application?

A I don't recall.

Q Have you reviewed any license applications for denturist applicants since you've been a board member?

A Just the staff—

Q No, sir. I'm asking if you.

A No

Q Pardon?

A No

Q And the staff has never presented any denturist applications for your review for any final decision, have they?

A Just the only thing I think they present to us is the reviews on questions.

Q No, sir: that's not my question. My question is the application packets themselves from individual denturists, the staff has never presented any such applications for review for any issues that arise; is that correct?

A The only issues that arise are for on the examination on the questions if the-- I guess I'm not understanding your question.

Q The physical package that each applicant submits

for licensure with all the attachments and the qualifications and the certificates?

A No.

Q You've never seen any of those, have you?

A No, that is done by the staff.

Q Yes. Now when you were on the board in 1995 these staff people Susan Shoblom and Pat Collins, they also worked for the Board of Dentistry, didn't they

A I don't know.

Q You never investigated that, did you?

A No.

Q As a board member on the Board of Denture Technology, can you recall in the last five years any instance where the board did not adopt the recommendations of the staff?

A No, I don't I don't recall any.

Q Do you recall that the staff presented to the board for consideration an issue involving the

interpretation of what a Federal Enclave was?

A Yes, we discussed that.

Q And was that within the last year? I'll ask you a different question. When was that approximately that that discussion occurred?

A. The only think I can remember is the one we did at the very beginning.

Q And the staff members presented to the board the issue that an Indian Reservation was not a Federal Enclave; is that right?

A Right.

Q And the staff recommendation was that licensing by endorsement should not be approved if the license was from an Indian Reservation; is that correct?

A I don't understand your question again.

Q Well, the Federal Enclave was a way at one time under Initiative 607 where individual denturists who were licensed on an Indian Reservation could claim licensure under the State provisions of I-607 by

endorsement; is that correct?

A Yeah, and I think Claude and Keith Allison and McDonald and tem were fighting with the State to take that out.

Q Do you know for sure that Claude Edlin and Allen McDonald were opposing the licensure by endorsement through a Federal Enclave such as an Indian Reservation?

A They were with Keith Allison on this thing, I assume that they were involved in it, too.

Q Well you say they were with him; how did you know that, did some staff person tell you that?

A No.

Q How did you know it?

A Just general knowledge from, you know, I don't recall how I knew he was with him, just maybe somebody mentioned it, you know, I don't know; I just know that Al and them were all together with Allison, and at one time when they were fighting

their court thing I was with them, too.

Q What do you mean you were with them?

A Well, when we had a meeting at Allen's house over the initiative and the court battle that they were running and they decided to go to use the court to try to regulate it with the State, we were going to use the initiative. I donated money to their side to help with the court thing and I did the initiative thing, too, until it got too spendy and I had to decide one way or another to go and I went the initiative, and I know that Claude and McDonald and them were with Allison going through the court thing.

Q Going through the court thing; you mean the litigation in Yakima County?

A Well, trying to do the 18.120 court, do it that way.

Q Right, through the State Superior Court?

A Yeah.

Q But that's the extent, isn't it, of McDonald and Edlin's connection with Allison?

A I don't know.

Q You don't know really what that relationship was.

A I don't know what their total relationship is. I just know that they were involved.

Q You're just assuming that they were also opposing the license by endorsement through the Federal Enclave provision, aren't you?

A Right.

Q As a matter of fact you don't even know that Claude Edlin has filed a request for licensure by endorsement through the Federal Enclave of an Indian Denturist license, do you?

A I'm not sure, there was some things ZI remember from a meeting—I missed one of the board meetings so I know there was some, but I don't know; no, I don't know.

Q Did you know that Claude Edlin was sent via Fed-Ex a notice of a denturist examination one day prior to the examination in 1996?

A No.

Q Did the staff ever report to you that Claude Edlin had failed to appear for a re-examination?

A I don't recall.

Q Did you have any conversations with Kirby Putscher about Claude Edlin's license application?

A Not that I recall. I really don't talk about those things that I know of.

Q I know.

A With individuals, you know.

Q Right. Did Eric Hansen participate in the evaluation of the applicants when were you taking the examination?

A Yes, I think he was, he did; he was licensed at that time.

Q Did you have conversations with Rick Miller concerning this $10,000 contribution?

A Probably asked him to donate.

Q Robbie Rockwell testified under oath in this

hearing; are you aware of that?

A I understand she did.

Q What was your understanding as to what she said when she testified?

A What she testified to---

Q Pardon?

A I don't know what she was saying.

Q Okay. Are you claiming that she had a romantic relationship with you?

A No, I'm saying all I said was that she thought that probably we could be together and I gathered that from what she was saying.

Q You gathered that, in other words you assumed that from the words that she said?

A Yes.

Q But she never told you that she wanted to have a romantic relationship with you, did she?

A Just I gathered that that's what she wanted.

Q You gathered it but you never heard those words

or any words like, did you?

A No.

Q Now Robbie Rockwell testified that you encouraged her to make contributions to the WDA; do you agree with that?

A For the initiative?

Q Yes.

A I probably did ask her to donate.

Q Robbie Rockwell also said that you suggested that it would be—no, never mind, I'm not going to say that.

Have you had any military denturist experience?

A No.

Q Are you aware of whether or not Allen McDonald has had such military denturist experience?

A I think I recall. I think he was a technician in the service or assistant or something; I don't know, I don't remember; I kind of recall that he had some

dental in the service. I think he said he was out on the bases here in the state, I'm no positive.

Q Have you ever seen any of his denture work?

A Allen?

Q Yes.

A Not in a number of years I haven't.

Q When you saw it, when was the last time you saw it first of all?

A Well, I seen his dentures that his wife wore.

Q Have you ever seen Allen McDonald's denture work?

A Well, I believe he made them.

Q When did you last see them?

A I don't remember the last time I seen them.

Q Within the last three years?

A I remember Allen being at a hearing but I don't remember if LaVerne was there or not.

Q Within the last five years?

A I don't Remember.

Q When you saw the dentures that were made by Allen McDonald did you form an opinion that he was providing good, professional services as a denturist?

A I didn't form an opinion one way or the other.

Q Have you ever seen Claude Edlin's dentures that he prepares?

A I've seen dentures that Claude has made for—that he's made, yes.

Q Is your opinion of the quality of Claude Edlin's work that he provides good denturist services?

A I never have formed an opinion one way or the other.

Q How many years did you work with him, sir?

A Oh, we had a couple of clinics together.

Q How many years, sir?

A Probably working together in a clinic, oh, probably a total of a year maybe and then he worked in my lab. I let him use space in my lab for a couple of years or so.

Q And you had an opportunity to see the product that he prepared as a denturist: is that right/

A Not as a denturist.

Q Well, as a what?

A Dental technician.

Q Did he make dentures?

A He worked for a Doctor Matson.

Q Sir, did he make dentures?

A Yes.

Q Thank you. Now the dentures that he made, you saw them, right?

A I have seen dentures that he made, yes.

Q Did you form an opinion concerning whether or not those dentures were appropriate?

A No, I didn't.

Q You just never gave it a thought?

A No, never passed judgment on him, no.

Q Even when he was renting space from you and making dentures: is that right?

A He never rented space from me. I let him use space.

Q I see, even when he was using space from you, you never gave it a thought?

A No, no, I didn't.

Q Sir, do you consider it appropriate that—never mind. Ill ask a different question. Claude Edlin makes dentures now in Spokane County, doesn't he?

A That's what I understand.

Q Claude Edlin provides services in making dentures in the same market area that you do, doesn't he?

A Yes, he does.

Q He's a competitor of yours, isn't he?

A Not really.

Q What do you mean not really? You both have a market in the same local Spokane area; correct?

A Well, from what I understand he has a dentist in his office.

Q Sir, in the Spokane area a member of the public

could go to your place of business and get dentures; is that right?

A Yes, he can.

Q And in the same Spokane area a member of the public could go to Claude Edlin's place of business and get dentures; correct?

A They could.

Q So then in the Spokane area you and Claude Edlin compete for the same members of the public who want dentures; is that correct?

A Well, I suppose; but I think Doctor Fredrickson has got his name out there as the person who is supplying the dentures.

Q So then if in fact you're both in the same Spokane market area making dentures for the members of the public, do you think it's appropriate that you would participate in evaluating the practical examination of your competitor in Spokane?

A Do I think what? It's appropriate for me to

evaluate his examination?

Q That's what I asked.

A I didn't examine him.

Q I beg your pardon?

I did not participate in his examination.

Q You participated on the same day that he took the exam, didn't you, as an evaluator?

A I did not evaluate his exam.

Q And not only did you participate on the same day as his evaluator, you had contact with the other denturists on the same day that he was there, didn't you?

A What other denturist?

Q The evaluators.

A The examiners?

Q Yes.

A Well, they were in the same room, yes.

Q Claude Edlin wasn't in the same room with you and the other denturists who were examiners, was

he?

A No, he wasn't.

Q And there was opportunity for you and the other denturist examiners to have conversations at some time during that day, wasn't there?

A Well, we talked all day.

MR. SANDLIN: Thank you, I have no further questions.

JUDGE DEBUSSCHERE: Ms. Wulf, any redirect?

MS. WULF: No, Your Honor.

JUDGE DEBUSSCHERE: Okay, Mr. Fox, can you hear me?

MR. FOX: Yes, I can.

Appendix Q-20

APPENDIX R

Plaintiff List

Keith Allison, Pr Se
P.O. Box 8052
Yakima, WA 98908
(509) 966-6320

Jacklin Allison, Pro Se
P.O. Box 8052
Yakima, WA 98908
(509) 966-6320

Caide Edlin, Pro Se
4310 S. Myrtle
Spokane, WA 99223

Cheryl Edlin, Pro Se
4310 S. Myrtle
Spokane, WA 99223

Lila M. Way, Pro Se
14851 McAuley Rd.
Yakima, WA 98908
(509) 965-1955

Donald G. Way, Pro Se
14851 McAule Rd.
Yakima, WA 98908
(509) 965-1955

Mary Marsh, Pro Se
20 Meridian Way
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929 Northwest 59th St.
Seattle, WA 98107

Suzanne Lapsley,
Pro Se
Apt. D-34
Yakima, WA 98908
(509) 972-2528

Mark Lapsley, Pro Se

Apt. D-34
Yakima, WA 98908
(509) 972-2528

George M. White,
Pro Se
7311 15th Ave. N.W.
Seattle, WA 98117
(206) 781-9064

Darla Juhl, Pro Se
1210 So. 72nd Ave.
Apt N-412
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(509) 480-2669

Douglas K. Way, Pro Se
921 Tibling Road
Selah, WA 98942
(509) 698-4767

Karla Way, Pro Se
921 Tibling road
Selah, WA 98942
(509) 698-4767

Derrick Way, Pro Se
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Selah, WA 98942
(509) 698-4767

Zebulon Way, Pro Se
104 No. 90th Ave.
Yakima, WA 98908
(509) 961-4586

Stan Way, Pro Se
P.O. Box 596
Selah, WA 98942
(509) 697-6265

Jeremy Way, Pro Se
P.O. Box 596
Selah, WA 98942
(509) 697-6265

Nicky Dean Way, Pro Se
2706 Morain Pl.
Kennewick, WA 99337
(509) 582-8536

Reuben Johnson, Pro Se
Jefreu Sgts Village
Christ Church
Barbados West Indies
(246) 426-7420

June Hendrix, Pro Se
1916 No. 4th St.
Yakima, WA 98901`
(509) 248-4533

Patrick Clark, Pro Se
1916 No. 4th St.
Yakima, WA 98901
(509) 248-4533

Terri Higgins, Pro Se
2702 S. Havana
Spokane, WA 99223
(509) 535-7269

Sheila Hashimoto, Pro Se
4207 E. 29th
Spokane, WA 99223
(509) 535-2807

Leonard White, Jr., Pro Se
6411 Bob-O-Link Dr.
Dallas, Texas 75214
(214) 824-3583

Appendix R-1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

BRUCE A. MIYAHARA, OF WASHINGTON STATE OF HEALTH,	) No.96-2-02256-9
Plaintiff,	) Declarations of various witnesses
ALLEN McDONALD and LaVERNE McDONALD, Husband and wife, d/b/a THE DENTURE PLACE,	) involvement of State of Wa. in perpetrating fraud upon the defendants, by
vs.	) requiring a $10,000.00
ALLEN McDONALD and LaVERNE McDONALD, Husband and wife, d/b/a THE DENTURE PLACE,	) "Contribution" before licensure shall be granted: and showing the
THIRD PARTY PLAINTIFFS:	) the impossibility of achieving fairness in
vs.	) Licensing Process
WASHINGTON STATE DENTURISTS' ASSN. and its Individual members, including But not limited to, DON and DOROTHY JENSEN (husband And wife, acting individually And on behalf of their marital Community), RON HANSEN, (a married man, acting individually and on behalf of his marital community), ERIC	)

HANSEN (a single man),)
GARY FOX (a widower), VAL)
CHARRON (a married man,)
Acting individually and on)
Behalf of his marital estate),)
And JOHN DOES NUMBERED)
1 – 100)
)
THIRD PARTY DEFENDANTS)

ALLEN McDONALD hereby declares under penalty of perjury of the laws of the State of Washington as follows:

1. I am providing these statements based upon facts for which I have first hand knowledge, or information and belief. The attached statements have been provided me by the persons who have signed them, and who have had them notarized, or otherwise provided to this court under penalty of perjury, for the purpose of exposing the State of Washington, to oppress me and others like me who are similarly situated, trying to make a legitimate living practicing our reasonable trade in compliance with the appropriate laws which were in effect at the

time of commencement of our trade.

2. I was personally told by Gary Fox that I had to pay $10,000.00 to the political action fund of the Washington State Denturists' Association, before I could expect to be licensed under the provisions of RCW 18.30.010 et seq. Gary Fox is an appointed member of the Denture Technology Advisory Board, which is the state agency commissioned by law to oversee and authorize licensing of denturists according to the provisions of the Denturitry Act, RCW 18.30.010 et seq.

3. I have also attached other person's statements, in further corroboration of these facts. It is clear the State of Washington shall never allow me, nor people such as Keith Allison, to ever be licensed, simply because we are non-conformists, and we shall never be subjected to the continuing interference in our trades by the dentists or prosthodontists who have attempted to restrain our trade for decades.

4. I respectfully request this court set this matter for an evidentiary hearing. Since these issues have first arisen there has never been an evidentiary hearing upon these matters, concerning the "no harm" evidence we have submitted to this court, nor has there ever been an evidentiary hearing upon the state's interference in the licensing process where the examinations have been doctored, manipulated and designed to reward those applicants who conform to the demands of the state for these private payments for political action. What is so frustrating about this is that our own denturists in this state are assisting in this oppression, in spite of their alleged concern for the oppression of dentists and prosthodontists.

5. I respectfully request this court to read these attached statements, and deny the state's pending motions. These issues should be set for evidentiary hearing. The following statements are attached:

a) declaration of Allen McDonald

b) declaration of Keith Allison

c) declaration of Jacklin Allison

d) declaration of Douglas Way

e) declaration of Claude Edlin

f) declaration of Cheryl K. Edlin

g) declaration of Arnold E. King

h) declaration of Susan M. King.

6. I have also enclosed a copy of the December 11, 1993 report of the Washington Denturist Association, marked as Exhibit "I" and attached hereto as if fully stated which conclusively proves the origin of this $10,000.00 cash payment, which became the precondition for licensing here in the State of Washington. Please believe me, judge, this is a very serious matter here. I have been targeted by a very powerful group of people who have committed themselves to destroying me, and they are using the power of the State's Attorney General's Office to

further this objective.

7. I do not charge as much as dentists and prosthodontists do for the dentures I prepare. There are substantial savings to the public, by using my services, and receiving my products. There cannot be any evidence of harm to the public for the products and services I provide, as I have over thirty years of experience in this trade, and the quality of my work is unsurpassed here in Washington.

8. Just to show you how manipulative these denturists have been in "fixing" the licensing exam, please review Exhibit "J" attached hereto. This is a memo circulated to all prospective licensees which should prove quite interesting to this court, as it shows how the so-called "test" was developed. Realizing that these same persons became board members on the State Board of Denture Technology (see Exhibit "K") and were in control of grading any such tests it should be easy to see how these tests

were ear-marked for manipulation if I didn't pay the $10,000.00 extortionate political pay-off to these people. Incidentally, the State Board of Denture Technology is now called the State Advisory Board of Denture Technology.

9. As far as "grandfathering" is concerned, this again was another sham, designed to manipulate the laws of this state to prevent me from being a denturist. Please review Exhibit "L", which is a memo from the Washington State Denturists Association, informing me there shall be NO GRANDFATHERING. But then it appeared grandfathering would be allowed for those of us who had previously "registered." I tried to be grandfathered into this trade, but I was informed by state officials that the grandfather policy related only to those individuals who were coming in from another state, and would not apply to a state resident. This just doesn't make sense, because out-of-state denturists who are in the same position I am

in should not have better opportunities than I do. This is a violation of my rights to equal protection of the law, a constitutional right afforded by both our state and federal constitutions.

10. When these individuals who are after me decided to "maintain a closed door policy till further notice" (Exhibit "L") they did everything they could to use the state's power to assist them. I wonder how Attorney Craig McDonald would really feel if he knew how his attorney's efforts have been harnessed for these purposes? I am certain he has never seen the attached information. As evidence of the state's involvement in this planned conspiracy, please refer to Exhibit "M" which was written by one of these core individuals who has been personally involved from the commencement of this conspiracy, but now he is writing on behalf of a state agency, the Department of Health. Mr. Eric Hansen has two denturist offices, one of which is on the Nooksak Reservation (where

the licensing scam occurred regarding the Indian licensing examination, for the purchase price of $10,000.00, and one of which is somewhere around Bellingham. (This offensive misconduct in attempt to sell denturists' licenses was exposed by Keith Allison, who is now targeted by the state and these denturists, because of his refusal to go along with this offensive behavior.)

11. I am also attaching a copy of the Application for Denturist License, Exhibit "N", which I requested by "endorsement", which the state has refused to honor. Zit delineates my professional qualifications and the years of experience I have obtained. See how these denturists have set me up for retaliation because I refuse to pay the $10,000.00? I will rot in Hell before I pay this extortionate money. These state officials will never let me be a licensed denturist, and that is never going to change, unless a court intervenes to require a "house-cleaning" of the Washington State

12. I predict the denturists who have now established this "closed door policy" have put an irreversible entry barrier into this trade of denturitry which shall be impossible to overcome for new applicants. This was obviously not foreseen by some of the well-meaning denturists who first participated in this rule-making endeavor, but when the current denturists are retired, the people of Washington will have to go back to the dentists and prosthodontists for their dentures, at greater cost (and probably at a loss of quality, since the level of expertise for dentists and prosthodontists is not as great as the training I have received).

13. I am a registered denturist, having complied with the law for registration. I am conducting my trade under the exception to denturitry licensing cited in RCW 18.30.040, and I was practicing my trade before the enactment of RCW 18.30.010 et seq. This state

action which I have described to this court is a violation of my constitutional rights, and is a violation of 42 U.S.C. Section 1983. The state's motions should be denied. If they are not denied, then the damages to me shall be even more exacerbated.

Respectfully submitted this 31st day of October, 1996.

ALLEN McDONALD, defendant and third Party plaintiff

Appendix R-1

Washington State Deparment Health

Board of Denture Technology
1112 Quince St. SE/PO Box 1099
Olympia, WA 98504-7867
Tel: Z(360) 664-8681
Fax: (360) 764-9077

Application for

DENTURIST LICENSE

License requested by: Endorsement

McDonald Allen Pete
810 N. 16th Ave.
Yakima, WA Yakima 98902 Telephone unlisted

3304 Main Street Telephone (509) 248-4491
Union Gap, Wa Yakima 98903 Fax 451-6850
The Denture Place Telephone (509)248-4491
Union Gap, WA Yakima 98903 Fax 4451-6850

DOB: 4/4/42 Male
5 ft 8 inches 230 lbs. Brown eyes Black hair

If any "Yes" response, read carefully the information after each question and provide all necessary documentation. Your application will not be considered completed without it.

1. Within the past ten years, have you engaged in

any of the conduct described in the Uniform

Disciplinary Act, RCW 18.130.180, excluding the conduct described in 18.130.180(6) and 18.130.180(23)? No.

2. Within the past ten years, have you been found guilty in a criminal, civil, administrative agency, professional association or certifying agency proceeding of any of the conduct described in the Uniform Disciplinary Act, 18.130.180 RCW, or have you agreed to a stipulation or settlement in lieu of or as a result of such a proceeding? No.

3. Within the past five years, have you abused drugs or have you been diagnosed as addicted to drugs or alcohol? No.

4. do you have, or have you in the past five years been diagnosed as having or been hospitalized for a psychiatric condition; or do you have, or have you in the past five years been diagnosed as having or been hospitalized for any other mental condition that significantly impaired your ability to function? No.

5. Do you have, or have you in the past five years been diagnosed as having a physical or medical condition which may result in your being unable to practice with reasonable skill and safety? No.

List all jurisdictions where you are/were licensed to practice. Please provide an affidavit from each jurisdiction where you are/were licensed to practice.

State of Washington

License Number 600 345 546

From To 1987 Current

Have you ever been or are you currently the subject of a finding of professional misconduct, incompetence or incapacity? No.

Has your license to practice Denturism ever been revoked or suspended? No

Give complete information for each applicable section below, and attach an official sealed transcript.

Dental Tech. School. U.S.N. Dental Technology Certificate from 20 Sep. 62 to 25 Jan 63.

Dental Tech School. U.S.N. Dental Prosthetic Tech.

Certificate from 10 Apr 64 to 9 Oct 64.

Idaho State University Certificate 1988 summer

Aids Education at Yakima Valley Com College –

Certificate from 10 Mar 89 to 11...89

Additional Information:

1 C.P.R. in military

2. Prior documentation sent certified mail (P01f 702 023) to Connie Glasgow.

List names and addresses of hospitals, denturists, dental laboratories, etc. by whom you were employed and/or self employment location

Tacoma Denture Clinic, Tacoma Wa.

Lead Tech in Dentures/partials and lab sect. mgr.

From 1978 to 1980

Partial Denture Frame Casting Lab.

Puyallup Wa

Owner from 1981 to 1986

Yakima Denture Lab

Lead Tech and Manager
From 1986 to 1990

The Denture Place, 3340 Main St., Union Gap, WA

Registered Denturist/Owner

From 1990 to present

I, Allen Pete McDonald being first duly sworn, depose and say that: I am of good moral character; I am the person described and identified; that I am the person named in the diploma which accompanies this application; that I am the lawful holder of said diploma; that said diploma was procured in the regular course of instruction and examination without fraud or misrepresentation.

I hereby authorize all institutions or organizations, my references, professional, employers (past and present), business and professional associates (past and present) and all governmental agencies and instrumentalities (local, state, federal or foreign) to release to this licensing Board any information files Or records required by the Board for its evaluation of

my professional, ethical and physical qualifications for licensure in the State of Washington.

I have carefully read the questions in the foregoing application and have answered them completely, without reservations of any kind, and I declare under penalty of perjury in the State of Washington that my answers and all statements made by me herein are true and correct. Should I furnish any false information in this application, I hereby agree that such act shall constitute cause for the denial, suspension or revocation of my license to practice in the State of Washington.

Allan P. McDonald

Subscribed and sworn to before me this 26th day of July 1995 – Mary--------

Notary Public for Washington

Residing in Yakima.

Appendix R-2

From:

Allen McDonald, R.Dst.

3304 main St.

Union Gap, WA 98903

To:

Department of Health

ATT: Connie Glasgow

Dear Ms. Glasgow:

I'm a Registered Denturist, doing business in the state of Washington.

The proceeding documentation is to assist you in determining if I may qualify as a sitting member of the new Denturist Advisory Board that you are involved in forming.

I'm Registered according to the criteria set forth in RCW 18.120 and have been actively practicing for years in this state.

My training meets or exceeds the requirements set forth in the newly voted in Initiative 607.

Competent legal advice assures me that I'm a Grandfather as defined in the Health care professions Act cited above.

I have been politically active in the past, regarding the Denturism movement in this state. At present I'm not a member of the Washington Denturist Association, and have not been for quite some time.

The resume of WORK AND EDUCATIONAL EXPERIENCE was written back in the early 80's and has since been supplemented by adjunct courses: attended at Idaho State University (predental graduate level). And AIDS education at the practicing medical health professional level at Yakima Valley Community College.

I may be contacted at this phone number (509) 248-4491, The Denture Place.

Sincerely, Allen McDonald, R.Dst.

December 19, 1994

REGISTRATIONS AND LICENSES

State of

Washington Unified Business ID #: 600 345 546

Business Id #: 001

Location : 002

ORGANIZATION TYPE

SOLE PROPRIETORSHIP

ALLEN PETE MC DONALD

ALLEN P. MC DONALD. R.DST. REGISTERED

DENTURIST

3304 MAIN ST.

UNION GAP WA 98903

TAX REGISTRATION

REGISTERED TRADE NAMES:

ALLEN P. MC DONALD. R.DST. REGISTERED

DENTURIST

THE DENTURE PLACE

Appendix R-4

Certificate of Instruction

Dental Technician School United States Navy

This is to certify that

Allen Pete McDonald who is a Dental Technician, 3rd Class in the United States Navy has satisfactorily completed the prescribed course of instruction for Dental Prosthetic Technician and is awarded this certificate by the Bureau of Medicine and Ssurgery, Navy Department, Washington, D.C., on this ninth day of October, 1964 Awarded at the U.S. Naval Dental Technicians School, USNTC, San Diego, California.
H.R. Superko – Dental Office Captain Dental Corps,

U.S. Navy

No 15568

Appendix R-5

Certificat of Instruction

Dental Technician School United States Navy

This is to certify that

Allen Pete McDonald who is a Dentalman in the United States Navy has satisfactorily completed the prescribed course of instruction of Dental Technology, and is awarded this certificate by the Bureau of Medicine and Surgery, Navy Department, Washington, D.C., on this 25th day of January, 1963

Awarded at the U.S. Naval Dental Technicians School, USNTC, San Diego, California.

B.H. Faubion Dental Officer Captain, Dental corps, U.S. Navy

No. 14032

Appendix R-6

Idaho State University
OFFICE OF CONTINUING EDUCATION

Certificate of Completion

Denturitry Workshop – Summer,. 1985

Allen P. McDonald
Completed Session I of a Continuing Education
Program in Denturitry

Delane Kritsky
Dean of College of Health Related
Professions

Jack W.....

Dean of Continuing Education

Appendix R-7

Certificate of Achievement

YAKIMA VALLEY COMMUNITY COLLEGE
YAKIMA, WASHINGTON

This certifies that Allen McDonald has completed the course of instruction in AIDS Education (7 Hours) and is hereby awarded this Certificate of Completion

In witness whereof, we have affixed our signature and seal this 11th day of march 1989

Chris Shorl, M.S.

Associate Dean of Instruction

Appendix R-8

APPENDIX S

News Release From The Pacific

Legal Foundation

Lawsuit Targets Oregon's

Moving-Business Cartel

Restrictive Licensing law is Unconstitutional,

Charges Pacific Legal Foundation

PORTLAND, OR; June 4, 2008: The State of Oregon illegally restricts competition in the moving business by forcing start-ups to get permission from established moving firms before they can enter the market. So argue attorneys with Pacific legal Foundation (PLF), in a lawsuit filed today that challenges the state's restrictive licensing procedures on movers.

PLF is the nation's leading litigator for free enterprise and limited government. PLF attorneys filed today's lawsuit in U.S. District Court in Portland, representing Adam Sweet, a Portland State college student and co-founder of a

small start-up business, 2Brothers Moving and Delivery.

"Imagine you want to start a business, but the government says you can't unless you get an 'OK' from your competitors," said PLF attorney Elizabeth A. Yi. "Do you think these established businesses are going to say, 'Oh yes, come on in – the more the merrier?' We're challenging this anti-competition law because **the right to earn a living in one's chosen occupation is protected under the U.S. Constitution. Government may regulate to protect the consumer, but not to protect businesses and interest groups from competition"** (emphasis added).

At issue is Oregon's requirement that new movers apply for an obtain the "Oregon Intrastate Certificate to Transport Household Goods or Passengers" before they can do business in the state. When a new business submits an application, the state

Department of Transportation notifies existing moving companies, but not the general public. If an existing company protests against the upstart business, the new entrepreneur has to prove that there is a "public need" for a new company – a need that can't be served by movers already long established.

"Not surprisingly, every new business that has applied for a certificate in the last two years has been turned down due to protests by existing companies," said PLF's Yi.

"Adam Sweet's story is an inspiring example of the pursuit of the American dream," Yi continued. In April 2006, he and his stepbrother, Jared Wood, began earning extra money by using their pickup truck to help people more. Soon their business grew into a full-time operation.

"2Brothers filled a niche" said Adam Sweet.

"2Brothers wasn't just doing full service moving, our

truck and crew have been readily available for small jobs, even just moving furniture around a client's home."

Appendix S

Appendix-T

United States Court of Appeals

For The Ninth Circuit

Filed Feb. 15, 2008
Cathy A. Catterson,
Clerk U.S. Court of
Appeals

KEITH ALLISON; et al — No. 07-36041

Plaintiffs-Appellants — D.C. No CV-06-01761JLR
Western District of
Washington. Seattle

v.

CITIZENS FOR AFFORDABLE DENTURES. including members And employees and their marital Estates; et al. — ORDER

Before: WALLACE. LEAVY AND RYMER, Circuit Judges.

Appellees' motion to dismiss this appeal for lack of jurisdiction is granted.

See U.S.C. 2107(a); United States v. Sadler, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional

All other pending motions are denied as moot.

Appendix-T